

organizers as is presently permitted by that regulation.

5. Provide the UFW with bi-monthly employee lists during any and all of the four 30-day periods in which the UFW desires to take access, without the need for the UFW to make a showing of interest.

6. Provide the UFW two two-hour periods, during work time, for it and its representatives to meet with employees on Respondent's property. The UFW shall present to the Regional Director its plans for utilizing the two-hour periods. After conferring with both the UFW and the Respondent, the Regional Director shall determine the manner and most suitable times for these two meetings. During this time, no employees shall be allowed to engage in work-related activities, although no employee shall be forced to attend the meetings or organizational activities. All employees shall receive their regular pay for the time away from work.

7. A high-ranking Guimarra representative, acceptable to the Regional Director, shall read to employees the attached Notice to Employees in appropriate languages on Company time. The reading or readings shall be at such times and places as are specified by the Regional Director. Following the readings, the Board agent shall be given the opportunity, outside the presence of supervisors, foremen, and management, to answer any questions employees may have concerning the notice or their rights under the Act.

8. Provide the UFW with bulletin board space at

each of its ranches, as determined appropriate by the Regional Director, for the UFW to post organizational information and the like. Such space shall be provided during any and all of the four periods during which the UFW desires to take access.

9. Post copies of the attached notice at times and places to be determined by the Regional Director. The notices shall remain posted for a period of 12 months from the date of initial posting. Copies of the notice shall be furnished by the Regional Director in appropriate languages. The Respondent shall exercise due care to replace any notice that has been altered, defaced, or removed.

10. Mail copies of the attached notice in all appropriate languages, within 20 days from receipt of this Order, to all employees employed during the payroll periods which include the following dates: September 10 to October 15, 1977.

11. Hand out the attached notice to all present employees and to all employees hired in the next six months, as well as to all employees hired during the next peak season.

12. Notify the Regional Director in writing, within 20 days from the date of the receipt of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him periodically thereafter in writing what further steps have

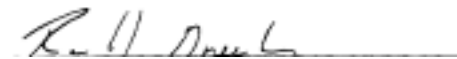
been taken in compliance with this Order.

It is further ORDERED that the September 26, 1977 election results be set aside.

And, it is further ORDERED that all allegations contained in the complaint and not found herein to be violations of the Act are dismissed.

Dated: June 8, 1979

AGRICULTURAL LABOR RELATIONS BOARD

A handwritten signature in dark ink, appearing to read "Ronald Greenberg", is written over a horizontal line.

Ronald Greenberg
Administrative Law Officer

NOTICE TO EMPLOYEES

After a trial where each side had an opportunity to present their facts, the Agricultural Labor Relations Board has found that we violated the law and that we interfered with the right of our workes to freely decide if they want the UFW to represent them. The Board has instructed us to send out, post on our property, and publicly read this Notice.

We will do what the Board has ordered, and also tell you that:

The Agricultural Labor Relations Act is a law that gives all farm workers the right to organize themselves; to form, join, or help unions; to bargain as a group and choose whom they want to speak for them; to act together with other workers to try to get a contract or to help or protect one another; or to decide not to do any of these things.

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

We have, in the past, violated our workers' rights by interfering with workers who were talking with organizers, by watching them and interrupting their conversations; by threatening workers with loss of employment or reduced hours if the UFW won the election; by distributing Company leaflets that contained illegal threats of possible job loss and promises of benefits connected with employee support of the UFW; by interrogating employees about their support for the UFW; by discharging the following employees who supported the UFW: Oscar Carrillo, Jesus Iniquez, Maria Iniquez, Jose Gamboa, Fidel Martinez, Ramon Ramirez, Felipa Ramirez, Sergio Ramirez, Ignacio Ramirez, Nicholas Ramirez Barren, Emeterio Rodriguez, Juan Zapata Rios, Juan Carrera, Hector Carrera and Domingo Telles; by refusing to rehire the following employees who supported the UFW: Eulalia Mares, Maria L. Mares, San Juana Mares, Gilberto Aceves, Miguel Ramos, Jose Garza, Rufina Romero Garza, Calextra Romero, Amabeli Encinas, Angel Garza, Lorenzo Galvan, Leonardo Galvan, Samuel Manriquez, Juana Manriquez, Tony Ochoa, Dolores Ochoa, Teresa Ochoa, Adelina Gurrola, Teofilo Garcia, Josephine Gonzales, Rosendo Gonzales, Teresa Perez, Rosa Perez, Alberto Perez, Celia Perez, Armando Perez, Eva Perez Guajardo and Sofia Tellez; by refusing to hire Elpidia Mesa, Marcos Mesa and Clara Ortega because of their concerted activities to improve working conditions. We

were wrong in doing such things and will not do such things in the future. If you want to join or support the UFW, you are free to do so.

Also, WE WILL offer jobs to all the above-named workers if they want them and restore their seniority and benefits. We will give them back pay for the time they were out of work.

Dated:

GUIMARRA VINEYARDS CORPORATION

BY: _____
Representative Title

THIS IS AN OFFICIAL NOTICE OF THE AGRICULTURAL LABOR
RELATIONS BOARD, AN AGENCY OF THE STATE OF CALIFORNIA. DO
NOT REMOVE OR MUTILATE THIS NOTICE.

APPENDIX A — EXHIBIT LIST

Received Rejected

General Counsel

(1) Moving Papers	X
(a) Charge 77-CE- 48-D	
(b) Charge 77-CE- 50-D	
(c) Charge 77-CE- 58-D	
(d) Charge 77-CE- 80-D	
(e) Charge 77-CE- 82-D	
(f) Charge 77-CE- 84-D	
(g) Charge 77-CE- 85-D	
(h) Charge 77-CE- 88-D	
(i) Charge 77-CE- 93-D	
(j) Charge 77-CE-105-D	
(k) Charge 77-CE-111-D	
(l) Charge 77-CE-113-D	
(m) Charge 77-CE-118-D	
(n) Charge 77-CE-123-D	
(o) Charge 77-CE-125-D	
(p) Charge 77-CE-128-D	
(q) Charge 77-CE-132-D	
(r) Charge 77-CE-135-D	
(s) Charge 77-CS-135-1-D	
(t) Charge 77-CE-140-D	

(u) Charge 77-CE-141-D
(v) Charge 77-CE-144-D
(w) Charge 77-CE-146-D
(x) Charge 77-CE-150-D
(y) Charge 77-CE-151-D
(z) Charge 77-CE-151-1-D
(aa) Charge 77-CE-155-D
(bb) Charge 77-CE-163-D
(cc) Charge 77-CE-165-D
(dd) Charge 77-CE-170-D
(ee) Charge 77-CE-181-D
(ff) Charge 77-CE-182-D
(gg) Charge 77-CE-189-D
(hh) Charge 77-CE-191-D
(ii) Charge 77-CE-192-D
(jj) Charge 77-CE-193-D
(kk) Charge 77-CE-194-D
(ll) Charge 77-CS-197-D
(mm) Charge 77-CE-198-D
(nn) Charge 77-CE-202-D
(oo) Charge 77-CE-203-D
(pp) Charge 77-CE-203-1-D
(qq) Charge 77-CE-207-D
(rr) Charge 77-CE-211-D
(ss) Charge 77-CS-218-D

(tt) Charge 77-CE-219-D
(uu) Charge 77-CE-222-D
(vv) Charge 77-CE-234-D
(ww) Charge 77-CE-235-D
(xx) First Complaint
(yy) Second Complaint and
Consolidation Order
(zz) Motion for Continuance
(aaa) Order Granting Motion for
Continuance
(bbb) Second Order Granting
Motion for Continuance
(ccc) First Amended Consolidated
Complaint
(ddd) Request for Setting a Law
in Motion
(eee) Notice of Pre-Hearing
Conference
(fff) Amended Notice of Hearing
(ggg) Substitution of Attorneys
(hhh) Notice of Pre-Hearing
Conference
(iii) Motion for Discovery
(jjj) Response to Respondent's
Motion for Discovery
(kkk) Second Amended Complaint
and Consolidation Order
(lll) Notice of Pre-Hearing
Conference

General Counsel

(2)	Declaration--Lorenzo Galvan		x
(3)	Map--drawn by wit. Galvan	x	
(4)	Payroll register, Tony Miyagishima, weeks ending 4/9,4/16,4/23	x	
(5)	Payroll register, Tony Miyagishima, weeks ending 6/4,6/11	x	
(6)	Payroll register, Tony Miyagishima, weeks ending 7/2,7/9,7/16	x	
(7)	Payroll check made out to Manuel Ramos	x	
(8)	Letter (pink) to employees from Sal Guimarra	x	
(9)	Declaration--Jose Gamboa	x	
(10)	Crop codes	x	
(11)	Daily field labor tickets, Tony Miyagishima, 7/4-9	x	
(12)	List of foremen with crew nos.	x	
(13)	Drawing of field, witness P. Medina	x	
(14)	Tape of farmworker song	x	
(15)	Writtern version of song	x	
(16)	Diagram of field, shown to organizer Saldana	x	
(17)	Payroll register, Crew #57 weeks ending 9/3,9/10, 9/17,9/24	x	

	Received	Rejected
(18) Check stub-Roberto Ruiz	x	
(19) Payroll register, crew #46 weeks ending 7/16,7/23,7/30	x	
(20) Declaration-Miguel Ramos	x	
(21) UFW handbill-picturing Domingo Telles at UFW convention	x	
(22) Yellow co. handbill signed by Sal Guimarra	x	
(23) Green co. handbill signed by by Sal Guimarra	x	
(24) Letter to Guimarra employees, 4/18	x	
(25) Payroll register, crew #9, weeks ending 8/13,8/20,8/27	x	
(26) Payroll register, crew \$44 weeks ending 7/9,7/16,7/23,7/30	x	
(27) Daily field labor tickets, crew #68, 8/29-9/30/77	x	
(28) Payroll register, crew #68 weeks ending 8/20,8/27,9/3, 9/10,9/17,9/24	x	
(29) WITHDRAWN		
(30) Pink co. leaflet	x	
(31) Green co. leaflet	x	
(32) Drawing by General Counsel for Tino Espinosa to mark	x	
(33) Daily field labor tickets, crews #57, 7/11-9/24	x	
(34) Green co. leaflet	x	
(35) Green co. leaflet	x	
(36) Yellow co. leaflet	x	
(37) Yellow and red co. leaflet	x	

	Received	Rejected
(38) Yellow co. leaflet	x	
(39) Gray co. leaflet	x	
(40) Orange co. leaflet	x	
(41) Drawing on yellow paper	x	
(42) Daily field labor tickets crew #44, 7/4-9/30	x	
(43) Light green co. leafletx		
(44) H. Hamilton's notebook	x	
(45) Payroll register, H. Hamilton 7/2-10/1	x	
(46) Payroll register, P. Padillo 8/13	x	
(47) Payroll register, crew 16M 7/9-8/20	x	
(48) Daily field labor tickets, crew 16M, 7/4-9/30	x	
(49) Payroll register, crew 16L 7/16-9/3	x	
(50) Payroll register, daily field labor tickets, Jose Chavez 7/2	x	
(51) Daily field labor tickets, crew #36 8/29-9/28	x	
(52) Payroll register, B. Medina 9/10,9/17	x	
(53) Letter of Recommendation from Co., 4/1/77	x	
(54) Floor plan, Tony Miyagishima's apartment	x	
(55) Yearly work history, Elpidia Mesa, '75 and '76	x	
(56) Daily field labor tickets, Macario Pinson, 8/18-8/27	x	

	Received	Rejected
(57) Daily field labor ticket, crew #5, 8/15-9/20	x	
(58) Daily field labor tickets, M. Navarro, 8/15-20	x	
(59) Payroll register, M. Navarro 8/20	x	
(60) Declaration-Javier Salcedo	x	

UFW

(1) Letter to Co., 4/7/77	x	
(2) List of employees of Manuel Del Campo Jr.	x	
(3) Order of Board Granting in Part, Denying in Part, Petitioner's Request for Review	x	

Respondent

(1) Map of Farms, Kern County	x	
(2) Tulare, Kings County Map	x	
(3) Map legend	x	
(4) Picking box	x	
(5) Field pack box	x	
(6) Drumming box	x	
(7) Wine grape box	x	
(8) Payroll register, M. Navarro 7/16	x	
(9) Bumper sticker (simulated)	x	

	<u>Received</u>	<u>Rejected</u>
(10) Yearly earnings history, Manuel Ramos		x
(11) 2 field labor tickets		x
(12) UFW leaflet with picture of Jose Chavez' crew	x	
(13) Bucket (plums)	x	
(14) UFW letter, 8/17	x	
(15) UFW letter, 9/1	x	
(16) ALRB letter, 9/14	x	
(17) Payroll eligibility list	x	
(18) Daily field labor tickets, crew #14, 3/28-9/3	x	
(19) Medical records, Manuel Ramos, Clinica Vista Sierra	x	
(20) Medical letter re: M. Ramos	x	
(21) Field labor tickets, Victor Pinson, 7/23	x	
(22) Payroll register, T. Miyagishima 4/9-9/3	x	
(23) Time cards, Sylvia Velasquez and Tina Cortez, 6/11 & 6/25	x	
(24) Yearly earnings-Tina Cortez	x	
(25) Yearly earnings-Sylvia Velasquez	x	
(26) Time cards-Frank Candia Ramona Vela	x	
(27) Yearly earnings, '77 Ramon Vela	x	
(28) Yearly earnings, '77 Frank Candia	x	
(29) Daily field labor tickets, crew #68, 8/25-9/26	x	

	<u>Received</u>	<u>Rejected</u>
(30) Daily field labor tickets crew #68, 8/23/76-9/15/76	x	
(31) All juice picking crews daily field labor tickets 9/2-9/24	x	
(32) Year work history, Lupe Zacarias, '75, '76, '77	x	
(33) Yearly earnings, '77 Steve Hopcraft	x	
(34) Yearly history-7 discriminatees in T. Espinosa's crew, with time cards, 9/3 Yearly history-Hector and Phil Garcia, Martha Chavez	x	
(35) Yearly history, Andy Munoz, '77	x	
(36) Yearly history, I. Grajeda, '77	x	
(37) Daily field labor tickets, Andy Munoz, crew #16M, 6/6-9/4	x	
(38) Time cards, Abdulla, Rejella and Ricardo Medina, weeks #32, 33, '77	x	
(39) Yearly work history, '77 for Jose Valdez	x	
(40) Yearly earnings, '73-'77 Jose Zermano	x	
(41) Yearly earnings, '73-'77 Maria Zermano	x	
(42) Yearly earnings, '73-'77 Benjamin Zermano	x	
(43) Yearly earnings, '73-'77 Maria G. Zermano	x	
(44) Yearly earnings, David Zermano	x	
(45) Yearly earnings, '77-present Miguel Ramos	x	
(46) Time cards for Oscar Carrillo and David Zermano, week 25/77	x	

	<u>Received</u>	<u>Rejected</u>
(47) Time cards, O. Carrillo, crew #16M, week 25-31/77	x	
(48) Time cards Benjamin, David & Jose Zermano-week 28/77 Marie-week 29/77 2 payroll checks-7/13/77	x	
(49) Settlement and Board Order Approving	x	
(50) UFW's petition	x	
(51) Employer's Response	x	
(52) Tally of Ballots	x	
(53) Notice of Intention to Organize	x	
(54) Yearly earnings, '73-'77 Graciela Rivas	x	
(55) Yearly earnings, '73-'77 Ruben Rivas	x	
(56) Guide to crew Foremen	x	
(57) Diagram drawn by John Guimarra Jr. (Liceaga incident)	x	
(58) Letter from Sal Guimarra, 7/16/77	x	
(59) "To All Guimarra Supervisors" from Sal Guimarra	x	
(60) Map-Ducor Ranches	x	
(61) Weekly time cards-Hamilton's crew, 8/21"	x	
(62) Weekly time cards-Hamilton's crew, 8/28	x	
(63) Yearly earnings, '73-'77, Gary Clark Weekly time cards, Burkhead & crew #41	x	

	<u>Received</u>	<u>Rejected</u>
(64) Yearly earnings, '77 Ronald Robinson Time cards—crews 41, 4A, 8/28	x	
(65) Yearly earnings, '77 Ken Sargent, & 2 payroll cards—8/25	x	
(66) Yearly earnings, '73-'77 Ed Russel (payroll cards)	x	
(67) Yearly earnings, '77 T. Glover (payroll cards)	x	
(68) Yearly earnings, '73-'77 R. Jones (payroll cards)	x	
(69) Payroll cards—Hubert Burkhead 8/20-8/27	x	
(70) Yearly earnings, '77 Wilfred Riley	x	
(71) Payroll sheets, '71-'77 employees as of 9/17/77	x	

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GIUMARRA VINEYARDS	)	Case NOS.		
CORP. & GIUMARRA	)	77-CE-48-D	77-CE-135-D	77-CE-198-D
FARMS, INC.,	)	77-CE-50-D	77-CE-140-D	77-CE-202-D
	)	77-CE-58-D	77-CE-141-D	77-CE-203-D
Respondent/Employer,	)	77-CE-80-D	77-CE-144-D	77-CE-207-D
	)	77-CE-82-D	77-CE-146-D	77-CE-211-D
and	)	77-CE-84-D	77-CE-151-D	77-CE-218-Q
	)	77-CE-85-D	77-CE-155-D	77-CE-219-D
UNITED FARM WORKERS	)	77-CE-88-D	77-CE-163-D	77-CE-222-D
OF AMERICA, AFL-CIO,	)	77-CE-93-D	77-CE-165-D	77-CE-234-D
	)	77-CE-105-D	77-CE-170-D	77-CE-235-D
Charging Party/	)	77-CE-111-D	77-CE-182-D	77-CE-135-1-D
Petitioner.	)	77-CE-113-D	77-CE-189-D	77-CE-151-1-D
_____	)	77-CE-118-D	77-CE-191-D	77-CE-203-1-D
		77-CE-123-D	77-CE-192-D	77-CE-150-D
		77-CE-125-D	77-CE-193-D	77-CE-181-D
		77-CE-128-D	77-CE-194-D	77-RC-16-D
		77-CE-132-D	77-CE-197-D	

7 ALRB No. 24

DECISION AND ORDER, DECISION ON OBJECTIONS,
AND ORDER SETTING ASIDE ELECTION

On June 8, 1979, Administrative Law Officer (ALO) Ronald Greenberg issued the attached Decision in this proceeding. Thereafter, the Charging Party, the General Counsel, and Respondent each timely filed exceptions, a supporting brief, and a reply brief.

The Board has considered the record and the attached Decision in light of the exceptions and briefs, and has decided to affirm the ALO's rulings, findings, and conclusions only to the extent consistent herewith.

Following a petition for certification filed by the United Farm Workers of America, AFL-CIO (UFW), a representation election was conducted on September 26, 1977, among Respondent's agricultural employees. The official Tally of Ballots showed the following

results:

UFW	673
No Union	900
Challenged Ballots	172

The UFW filed many objections to the election, ninety-two of which were set for hearing. A complaint alleging forty-six unfair labor practices by Respondent was issued by the General Counsel, based on events related to the election campaign. The election objections hearing was consolidated with the hearing on the unfair-labor-practice charges.

The ALO found that twenty-eight former employees of Respondent were illegally refused employment in 1977 because of their support for the UFW, and that Respondent committed numerous other violations of section 1153(c) and (a) of the Agricultural Labor Relations Act (Act) by discriminatorily discharging employees, threatening employees with adverse consequences should they select the UFW as their collective bargaining representative, interfering with UFW organizers, and engaging in surveillance of employees' union activities. Concluding that the aforesaid conduct of Respondent tended to adversely affect the employees' freedom of choice, the ALO recommended that the election be set aside. He also recommended several remedial measures to correct the effects of Respondent's unfair labor practices.

Respondent filed thirty exceptions to the ALO's Decision and his recommended remedial order.

Summary of Findings

Based on our review of the entire record, we conclude that

Respondent discriminatorily discharged one employee, discriminatorily failed or refused to hire or rehire thirty-one employee-applicants, discriminatorily delayed or interfered with the work of two employees, interfered with statutorily-protected employee rights by engaging in threats and surveillance, and, by all of the foregoing acts and conduct, created an atmosphere in which its employees could not exercise free choice in the election.

Evidentiary Exceptions

Respondent's first two exceptions to the ALO's Decision raise issues under the California Evidence Code, which, pursuant to section 1160.2 of the Act, is applied "so far as practicable" to this Board's-unfair-labor-practice proceedings.

Respondent excepts to the inclusion in the record of this case of testimony regarding a meeting or meetings held in August 1977, among John Giumarra, Jr., Respondent's Vice-President and General Counsel, Maurice Jourdane, an attorney then employed in the Fresno Regional Office of the Agricultural Labor Relations Board (Board), and Board agent Shirley Trevino. Giumarra, Jourdane, and Trevino met to discuss unfair labor practice charges which the UFW had filed against Respondent. Respondent contends that the conversation was in the nature of a settlement discussion and that section 1152 of the Evidence Code^{1/} renders evidence of such

^{1/} Section 1152 of the Evidence Code provides: "Evidence that a person has, in compromise or from humanitarian motives, furnished or offered or promised to furnish money or any other thing, act, or service to another who has sustained or will sustain or claims that he has sustained or will sustain loss or damage, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove his liability for the loss or damage or any part of it."

discussions inadmissible. We find it unnecessary to rule on this exception, as, unlike the ALO,^{2/} we place no reliance on this evidence in finding that Respondent committed several violations of the Act, as discussed below. Sufficient independent evidence exists in the record to support each of our findings, and no additional findings of violations would result from taking into account the evidence in dispute.

Respondent's second exception based on the Evidence Code concerns a refusal by the ALO to permit certain evidence to be introduced. Respondent moved on the 39th day of the hearing to introduce testimony by fifteen crew foremen, none of whom were named in the complaint, that each of them had in his or her crew during the 1977 harvest an employee or employees who had joined the strike in 1973. Respondent contends that the preferred testimony would have refuted the allegation in Paragraph 5 of the complaint that:

For the seven months from the start of March, 1977, until the representational election September 26, 1977, respondent adopted and implemented a discriminatory hiring policy of refusing to hire farm workers that supported the UFW during the 1973 economic strike at respondent's ranches and thereafter.

Relying on Evidence Code section 352,^{3/} the ALO did not allow the preferred testimony to be introduced. He stated the following reasons for his refusal: The testimony would take up too

^{2/} See p. 28, fn. 11, of the ALO's Decision.

^{3/} Evidence Code section 352 provides: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

much time and be of little probative value because much evidence had already been received as to whether or not Respondent had a discriminatory policy as alleged; the testimony could have been offered earlier in the hearing; to admit the testimony would open up complex problems unnecessary to resolution of the allegations in the complaint, some of which problems would be exacerbated by Respondent's admitted lack of complete records for certain employees who had allegedly struck in 1973 but been rehired before the 1977 harvest.

Having carefully considered the arguments urged by Respondent in support of its contention that the ALO erred in refusing to allow the preferred testimony of fifteen crew foremen not named in the complaint, we find that the ALO's refusal did not constitute an abuse of the discretion vested in him by Evidence Code section 352. In view of the length of the hearing in this matter, the late stage at which Respondent first proposed to introduce the testimony in issue here, the fact that considerable evidence bearing on Respondent's policy with respect to hiring 1973 strikers had already been introduced by all parties, with all parties having had full opportunity to cross-examine witnesses, and the numerous extraneous issues that the preferred testimony might have raised, we affirm the ALO's ruling on Respondent's motion, as we find it was neither improper nor inappropriate.

Unfair Labor Practices and Election Objections

Respondent excepts to the ALO's conclusion that Respondent violated section 1153(c) and (a) of the Act by refusing to hire Eulalia, Maria, and San Juana Mares in 1977. As to Eulalia and

Maria Mares, we agree with the ALO that a preponderance of the evidence that respondent's failure to hire them constituted the violation alleged. Juventina Mares Cortez made several attempts to get work with Respondent for Eulalia and Maria during 1977. On one occasion, crew foreman Tony Miyagishima told her he did not want UFW adherents, when he referred to as "Chavistas," because they were too much trouble. Sal Giumarra, Respondent's President, testified that he would have been willing to employ Eulalia and Maria in 1974, had they sought work then, but that in 1977 he was unwilling to hire them because in their years of work for Respondent before the 1973 strike they had done poor work. He did not explain why their purportedly poor past work would have been forgiven in 1974 but not in 1977. We conclude that the claim of poor past work was a pretext intended to mask Respondent's real reason for not hiring Eulalia and Maria, their support for the UFW.

As to San Juana Mares, we find that Respondent's exception has merit. The parties agree that Sal Giumarra offered her a job, through her sister Juventina, in August 1977, after Juventina filed an unfair labor practice charge accusing Respondent of violating the Act by its refusal to hire members of her family. The question in dispute is whether Sal Giumarra also offered San Juana work, through Juventina, earlier in the season.

Sal Giumarra testified that he thought Juventina and San Juana were the only members of the Mares family who were "worth their salt" as workers. He stated that he told Juventina in early July, as the pre-harvest thinning work was ending, that San Juana

could report for work in the harvest. Juventina testified that Sal's only offer of work for San Juana was the one he extended in August.

The ALO did not make an explicit credibility resolution with respect to the conflicting testimony given by Sal Giumarra and Juventina on this issue. He found that Giumarra could have offered San Juana immediate employment in the thinning. Payroll records for the Miyagishima crew, however, indicate that while there had been hiring during the thinning, no hiring took place that late in the thinning. If Respondent did in fact, during the thinning, offer to have San Juana go to work, when the harvest got underway a few days later, and hired no other employees between this offer and the start of the harvest, the delay of a day and a half while the thinning was being finished would not constitute a violation of the Act. Accordingly, in the absence of a credibility resolution in Juventina's favor as to the disputed offer, we find that General Counsel has not established that Respondent discriminated against San Juana Mares in violation of section 1153(c) or (a) of the Act.

Respondent excepts to the ALO's finding that Respondent violated section 1153(c) and (a) in failing to hire Gilbert "Shorty" Aceves in 1977. The exception is without merit. Two crew members testified that crew foreman Tony Miyagishima told their, he did not want "Chavistas" like Shorty on the crew, and Tony acknowledged that he remembered Shorty being on picket lines at Respondent's operation during the 1973 strike. The preponderance of the evidence supports the conclusion that Respondent failed or refused to hire Shorty in 1977 because of his adherence to the UFW, and thereby violated

section 1153 (c) and (a) of the Act.

Respondent excepts to the ALO's conclusion that Respondent's failure to hire Miguel Ramos in 1977 constituted a violation of section 1153 (c) and (a) of the Act. The exception is meritorious. The ALO's conclusion rests entirely on Ramos' testimony and a declaration he executed in August 1977, which was inconsistent with his testimony at the hearing. The ALO resolved the conflict between Ramos' testimony, the imprecision of which he acknowledged, and that of foreman Soto, who allegedly rejected Ramos' application for work, on the basis that, although both Ramos and Soto "were unbelievable at times," Soto was less believable. We find this an inadequate reason for accepting Ramos' testimony and basing an unfair-labor-practice finding upon it. As the evidence produced by the General Counsel does not constitute a preponderance of the evidence on the issues raised by this alleged violation of the Act, the allegation is hereby dismissed.

Respondent excepts to the ALO's conclusion that it violated section 1153 (c) and (a) in refusing to hire Jose Garza, Rufina Romero Garza, and Calextra Romero in 1977. This exception is without merit. The three had worked for Respondent for several years up to and including 1973, had gone on strike in 1973, and had not worked for Respondent in the years between 1973 and 1977. In their years with Respondent prior to 1973 they worked for some time on a crew of which Tony Miyagishima was the sub-foreman. When they applied to Sal Giumarra for work, Sal referred them to crew foreman Tony Miyagishima; Miyagishima did not hire them but referred them back to Sal Giumarra, who told them when they next saw him that no

work was available.

Rufina Romero Garza testified that when she asked Miyagishima for jobs for herself, her husband, and her mother, Miyagishima told her that a "freeze" had been imposed on his crew, which prevented him from hiring more workers unless Sal Giumarra specifically authorized the hire. Payroll records indicate that five workers were added to Miyagishima's crew at or shortly after the time of Rufina's request. At the hearing, Miyagishima explained this by saying that the five had all worked in his crew during 1976 and that persons who had worked on his crew in the 1976 harvest were exempt from the hiring freeze because they were known to do work of acceptable quality.

Although Miyagishima testified that he remembered the three alleged discriminatees from working with them before 1973, he did not say whether they had been good or poor workers. Rufina testified that Miyagishima told her the he didn't want "old" workers because they were the cause of too much trouble. The ALO credited her testimony on this point, although Miyagishima denied having made such a statement.

We concur with the inference drawn by the ALO from the record evidence that the "trouble" Miyagishima wished to avoid by not having "old" workers like Rufina, Jose, and Calextra on his crew was their support for the UFW and that this, not doubts about the quality of their work, was Miyagishima's reason for treating them differently from the returning 1976 crew members, i.e., sending them back to Sal Giumarra instead of hiring them for positions which were available on his crew. His failure and refusal to hire them was

therefore a violation of section 1152 (c) and (a) of the Act.^{4/}

Respondent excepts to the ALO's conclusion that it violated section 1153(c) and (a) through foreran Tony Miyagishima's failure or refusal to rehire Amabeli Encinas and Angel Garza. We find merit in this exception only to the extent that it applies to Angel Garza.

Amabeli Encinas worked on Miyagishima's crew from April 16, to approximately June 1, 1977, when she quit without receiving any assurances that she would be rehired if and when she sought work again. In late August, Amabeli and Angel Garza sought work on Miyagishima's crew. Miyagishima told them he had no positions available as his crew was then subject to a hiring freeze. It is well established that both Amabeli and Angel were active UFW supporters and that Miyagishima knew of their union support.

The payroll records for the Miyagishima crew indicate that two persons, Rosaura Contreras and Paul Balderas, Jr., rejoined the crew at about this time, having been elsewhere for several payroll periods. Respondent offered no explanation for rehiring these former crew members while refusing to rehire Amabeli. The failure to rehire her appears to have been based on Tony's negative attitude toward "Chavistas." We conclude, therefore, that Respondent violated section 1153(c) and (a) of the Act by failing or refusing to rehire Amabeli Encinas. The failure to hire Angel Garza does not constitute a violation of the Act, as Angel had not worked on the crew earlier in the season and was not entitled to receive the same

^{4/} Evidence that the wife of another crew foreran later suggested they apply for work to her husband is immaterial, as the violation of the Act: through Miyagishima's refusal to hire them had already occurred.

treatment as former crew members who applied for rehire. Joe Maggio, Inc., (July 15, 1978) 4 ALRB No. 37; Abatti Farms (May 9, 1979) 5 ALRB No. 34. Accordingly, this allegation is dismissed as to Angel Garza.

Respondent excepts to the ALO's conclusion that it violated section 1153(c) and (a) by Tony Miyagishima's failure or refusal to hire Lorenzo and Leonardo Galvan, Samuel and Juana Manriquez, and Tony, Dolores, and Teresa Ochoa, on August 22, 1977. This exception lacks merit.

One of Respondent's foremen, Santana Soto, contradicted Respondent's contention that the Miyagishima crew was doing no hiring at the time these seven sought to be hired. The circumstances in which they were refused work, having met Miyagishima at Miyagishima's invitation, at 5:00 a.m. on the road to the crew's worksite in Ducor, are susceptible of no other rational explanation than that they would have been given jobs had Miyagishima and Sal Giumarra not recognized them as UFW adherents. Respondent's explanation, that Miyagishima invited them to meet him at such an unlikely time and place so that he could tell them in person why they could not be hired, is altogether unpersuasive. We conclude that Respondent violated section 1153(c) and (a) of the Act by refusing to hire the seven for anti-union reasons.

Respondent excepts to the ALO's conclusion that it violated section 1153(c) and (a) by its refusal, through supervisor Dave Stanley and foreman Tino Espinosa, to hire Adelina Gurrola, Teofilo Garcia, and Josephine and Rosendo Gonzales. The exception is without merit.

As Respondent admitted knowing of the union support of Gurrola and Garcia, the entire dispute as to this alienation centers on what foreman Espinosa told the four applicants when they asked him for work. Espinosa testified that he offered them work, which they refused, as "drummers,"^{5/} which requires carrying a caja loca or "crazy box," which weighs over 40 pounds when full. Each of the four alleged discriminates testified that Espinosa did not offer them such work, which they would have accepted, but instead told them that no work at all was available on his crew. Payroll records indicate that other applicants were being hired onto the crew at the time.

As the testimony of the four was consistent and was implicitly credited by the ALO, in contrast to the uncorroborated testimony of Tino Espinosa, we conclude that the evidence preponderates in favor of General Counsel's version of events, that Espinosa rejected Adelina Gurrola and Teofilo Garcia because of their union support, and that Rosendo and Josephine Gonzales were rejected by Respondent because they were accompanying known union adherents Gurrola and Garcia. Respondent thereby violated section 1153(c) and (a) of the Act. Hedison Manufacturing Co. (1980) 249 NLRB 791 [104 LRRM 1506]; Computed Time Corp. (1977) 228 NLRB 1243 [94 LRRM 1752]; Howard Johnson Co. (1974) 209 NLRB 1122 [86 LRRM 1148]

Respondent excepts to the ALO's conclusion that it violated section 1153(c) and (a) of the Act by the failure or refusal of its

^{5/} Drummers perform a clean-up operation, picking grapes of inferior quality unsuitable for the table-grape market.

foreman, Santana Soto, to hire Teresa Perez, five of her children and one daughter-in-law. The exception is without merit.

Teresa Perez testified that Soto told her on July 10, 1977, that he would hire her and three of her children as pickers if he could find two packers to work with them. She testified that on July 12 she told Soto by telephone that she had located two experienced packers (Eva Perez Guajardo and Sofia Tellez), who were willing and able to join the crew. She testified further that Soto said he would call her as soon as his crew switched fields, but never did so. Soto admitted knowing that Teresa had gone on strike in 1973. He denied having had any conversation with Teresa on July 12, but three of Teresa's daughters and her son all corroborated the material aspects of her testimony regarding the telephone conversation. The ALO credited Teresa's testimony.^{6/} In view of this credibility resolution, we agree with the ALO that a preponderance of the evidence establishes that Soto discriminatorily failed to hire Teresa Perez, Rosa Perez, Celia Perez, Alberto Perez, Armando Perez, Eva Perez Guajardo, and Sofia Tellez, in violation of section 1153(c) and (a) of the Act.

Respondent excepts to the ALO's conclusion that it violated section 1153(c) and (a) by discriminatorily discharging Jesus and

^{6/} It is this Board's established policy not to override an ALO's resolutions with respect to credibility unless the clear preponderance of all the relevant evidence convinces us that the resolutions were incorrect. Adam Dairy dba Rancho dos Rios (April 26, 1978) 4 ALRB Mo. 24; Standard Drywall Products (1954) 91 NLRB 544 [16 LRRM 1531]. We have carefully examined the record and find no basis for reversing this credibility resolution or, with the exception of Miguel Ramos' testimony discussed on p. 3, supra, any of the ALO's other credibility resolutions.

Maria Iniquez. We find merit in this exception. The record contains substantial evidence that the alleged discriminatees were unsatisfactory workers, which is the reason given by Respondent for discharging them, and little if any probative evidence that adherence to a union or activities on its behalf was the reason for their discharge. Lu-Ette Farms (May 10, 1977) 3 ALRB No. 38. Accordingly, the allegation that their discharge constituted an unfair labor practice is hereby dismissed.

Respondent excepts to the ALO's conclusion that it unlawfully violated section 1153(c) and (a) of the Act by foreman Jose Liceaga's refusal to rehire Jose Gamboa late in the 1977 harvest. We find no merit in this exception.

We find no reason in the record to disturb the ALO's credibility resolution in favor of the alleged discriminatee with respect to a conversation he claimed to have had with crew foreman Jose Liceaga in July 1977, in which Liceaga told him he would be able to rejoin the crew after taking time off for a vacation. We agree with the ALO in inferring from dubious parts of Liceaga's testimony that Liceaga was motivated in refusing to rehire Gamboa late in the harvest by a desire not to have this known UFW supporter on his crew during the election campaign. Liceaga's testimony, for example, that he was unaware of Gamboa's support for the union does not hold up well in the face of the undisputed facts that Gamboa led several members of Liceaga's crew off the job briefly in 1976 to support a wage dispute, and that Gamboa, unlike other crew members, wore a UFW button while working in 1976. Similarly, Liceaga's testimony that he failed to notify Gamboa later in the season when

positions admittedly became available on his crew because he did not know where or how to reach him hardly appears consistent with his testimony that he had known Gamboa fairly well for twenty years.

In view of the enlargement of the crew by two members at about the time Gamboa unsuccessfully sought to be rehired, we conclude that foreman Liceaga's rejection of Gamboa's request for rehire was discriminatory and was based upon the latter's support for the UFW. Respondent thereby violated section 1153(c) and (a) of the Act.

Respondent excepts to the ALO's conclusion that it violated section 1153(c) and (a) of the Act by the act of its sub-foreman, Pancho Chavez, in discharging Fidel Martinez. We find no merit in this exception. Martinez and three other crew members testified that Chavez fired Martinez when Martinez said that he wanted to be paid for the time spent receiving instructions from Chavez and that he was going to take his complaint to the UFW. Chavez and two other witnesses testified that Chavez did not fire Martinez but told him he could take his grievance to the UFW if he so desired. The ALO credited Martinez and the witnesses who corroborated his version of the conversation. We find in the record no reason to overturn his credibility resolution. Therefore Respondent's exception is hereby dismissed.

Respondent excepts to the ALO's conclusion that it violated section 1153(c) and (a) of the Act by the failure of supervisor David Stanley and foreman Tino Espinosa to rehire employees Emeterio Rodriguez and Juan Zapata Rios. We find no merit in this exception.

Rodriguez and Rios worked through most of the 1977 season

on Espinosa 's crew. They were apprehended by the Immigration and Naturalization Service on September 8, and did not report to work again until September 17. Espinosa did not let them resume work but sent them to supervisor Stanley, knowing that Stanley was not hiring new workers at that time. Espinosa and Stanley both testified that Respondent followed a policy whereby an employee who missed more than a week of work without prior authorization was required to formally re-apply for work. When Espinosa sent Rios and Rodriguez to apply to Stanley for work, he did not notify Stanley in any way that they had worked through most of the season, on his crew. He offered no explanation for this failure, which was inconsistent with his avowed desire to have the men rejoin the crew. Also inconsistent with such a desire was Espinosa's decision to send the men to Stanley instead of simply letting them rejoin the crew without informing Stanley; Espinosa testified that on occasion he would get around hiring freezes by simply failing to notify Stanley about employees he was hiring.

In the absence of an explanation by Espinosa for his failure to take the one simple step which would almost surely have resulted in the rehiring of Rios and Rodriguez, we infer that his failure was the result of a desire not to have the two UFW adherents on his crew as the election approached. That he knew of their support for the union is clear from the record. We conclude that Respondent's failure or refusal to rehire Rios and Rodriguez was based on their union support and that it therefore violated section 1153(c) and (a).

Respondent excepts to the ALO's conclusion that it violated

section 1153(c) and (a) of the Act by the refusal or failure of foreman Jose Chavez to hire Domingo Telles, Juan Carrera, and Hector Carrera. This exception is without merit.

Telles and the two Carreras worked on the Chavez crew until October 1977. The evidence in the record does not clearly establish whether they voluntarily quit the crew at that time or were laid off. On December 21 or 22, the three sought to be rehired onto the crew, which was engaged in pruning plum trees. On April 19, 1978, while the crew was pruning vines, Hector Carrera again asked Jose Chavez for work for the three. According to his testimony, on both occasions Chavez told him no positions were available but that he would call them as soon as work became available. Chavez never did call them, however.

Respondent's contention that the Chavez crew was subject to a hiring freeze all through the pruning season, from late November to mid-May, is undercut by payroll records showing that five workers on the crew during the harvest rejoined it not when the pruning season began but some time into the pruning. Respondent would have us distinguish these workers from Telles and the Carreras on the basis that the five had been laid off at the end of the harvest and then "reported late for the pruning operation," whereas Telles and the Carreras had quit the crew voluntarily. Respondent does not dispute that it knew of the union support of the three.

On the basis of the record as a whole, we find that Respondent's general policy was to rehire workers whom it had employed earlier in the same year, as in fact it did rehire five workers onto the Chavez crew. A distinction whereby those who quit

voluntarily were not to be rehired, but those who were laid off could be rehired, suggests a rigidity and formality which were not characteristic of Respondent's actual practice in most instances. Respondent's argument that such a distinction explains its refusal to rehire Telles and the Carreras was, we find, actually a pretext intended to disguise the real reason for not taking them back on the Chavez crew, i.e., their support for the UFW. The discriminatory treatment of the three for this reason constituted a violation of section 1153(c) and (a) of the Act.

Respondent excepts to the ALO's conclusion that it violated section 1153(c) and (a) of the Act by the failure or refusal of foreman Macario Pinson to hire Elpidia Mesa, Marcos Mesa, and Clara Ortega in July 1977. We find that Respondent's exception is meritorious.

Elpidia and Clara worked on Pinson's crew in 1976. Elpidia testified that she made several complaints to Pinson during the 1976 season about the food served at his labor camp and the unavailability of toilets there during a long period of plumbing repair. She also testified that she complained to the camp cook about the food and to Sal Giumarra about Respondent's wage levels. Pinson denied receiving any complaints from Elpidia, but the camp cook corroborated Elpidia's testimony that Elpidia complained to her about the toilet problems. Pinson further denied that Elpidia asked him for work in 1977 for herself and her husband Marcos and daughter Clara. He stated that he would have hired them if Elpidia had asked him for jobs for them in July 1977 as she claimed she did. The ALO credited Elpidia's testimony. Even if Elpidia's testimony is fully

credited, however, the General Counsel has not presented evidence establishing a connection between her complaints and Pinson's refusal or failure to rehire her. We therefore dismiss this allegation in its entirety.

Respondent excepts to the ALO's finding that foreman Macario Pinson threatened employees with loss of work if they signed authorization cards for the UFW, saying, "He who signs for the union is signing his own check." We reject this exception, as the ALO's finding was based entirely on a credibility resolution he made in favor of General Counsel's witness Jesus Iniquez and against Pinson. We find no reason in the record to upset this credibility resolution. Although Pinson's remark was alleged as one of the Charging Party's election objections and was not mentioned in the complaint, it was fully litigated at the consolidated hearing, and as the remark constituted interference with employee organizational rights protected by section 1152 of the Act, we find that it violated section 1153(a) of the Act.

Respondent excepts to the ALO's conclusion that it violated section 1153(c) and (a) of the Act by two constructive discharges: that of Oscar Carillo from the crew of Piano Padillo, and that of Ramon Ramirez and his family from the crew of Valeriano Juarez. As to the Ramirez family, the exception has merit. The petty insults and minor harassment which the record indicates Ramirez and his family might have been subjected to by foreman Juarez, or with his tacit approval, do not constitute such severe treatment that they manifest an intention on Juarez' part to force the Ramirez family to quit. George Arakelian (Feb. 14, 1979) 5 ALRB No. 10; aff'd in

relevant part (1980) 111 Cal.App.3d 258; Pre-Cast Mfg. Co. (1972) 200 NLRB 135 [82 LRRM 1336] .

Turning to the alleged constructive discharge of Oscar Carillo by field supervisor John Murray, we find that Murray's offer of work to Carillo in a drumming job, which Carillo rejected, and Carillo's continued employment in caning are impossible to reconcile with a constructive discharge, even though Carillo was not offered a job picking table grapes which he may have been led to expect. Here again, Respondent's treatment of the employee was not so unfavorable that it manifested an intention to force the employee to quit; Carillo in fact continued working for Respondent for some time after being refused work as a picker.

We do find, however, that Murray's motive for refusing Carillo work as a picker was not that Carillo was a poor worker. This rationale is refuted by Murray's own choice of Carillo as foreman of a drumming crew in 1976. Rather, Murray's motives appear to have grown out of two incidents early in the 1977 season. Carillo on one occasion led the crew of foreman Andy Munoz in resisting an order of superintendent Al Giumarra that they continue working after nine hours in hot sun. On another day Carillo, in the presence of Munoz, urged the crew to quit as a group if any of them were fired. As Carillo was engaged in activity directed toward the protection or improved condition of fellow workers, his actions were within the sphere of protection provided by sections 1152 and 1153(a) of the Act. NLRB v. Sencore, Inc. (8th Cir. 1977) 558 F.2d 433 [95 LRRM 2865]; Randolph Division, Ethan Allen, Inc. v. NLRB (1st Cir. 1975) 513 F.2d 706 [89 LRRM 2013]; Owens-Corning

Fiberglass Corp. v. NLRB (4th Cir. 1969) 407 F.2d 1357 [70 LRRM 3065]

In retaliating for these acts of Carillo by offering him less desirable work than picking table grapes, Murray violated section 1153(a) of the Act.

Respondent excepts to the ALO's conclusion that it violated section 1153(a) of the Act by distributing a letter to employees during the election campaign which contained the following sentences:

Our company does not want or need a union. The company stands ready to deal with each and every employee individually, to hear his or her problems, to seek and implement solutions whenever feasible.

The ALO interpreted this language as a solicitation of employee grievances with an implied promise that the grievances would be pursued and corrected if correction were feasible. We concur in this interpretation.

The National Labor Relations Board (NLRB), whose decisions section 1148 of the Act requires us 'to follow as precedent where applicable, has held in several cases that an employer may solicit grievances during an election campaign if a grievance procedure was in operation at the enterprise before the campaign. See, e.g., ITT Telecommunications (1970) 183 NLRB 1129 [74 LRRM 1386]; Bryant Chucking Grinder Co. (1966) 160 NLRB 1526 [63 LRRM 1185]. But employers which had not regularly solicited grievances before an election campaign have been found in violation of the National Labor Relations Act (NLRA) for beginning to solicit grievances during a campaign. For example, in Swift Produce, Inc. (1973) 203 NLRB 360 [83 LRRM 1050], the Board stated:

There is no evidence that the Respondent was in the habit of soliciting grievances from its employees and, inasmuch as the tiring of the solicitation of grievances directly coincided with the origination of employee union activity, it is not unreasonable to draw the inference of improper motivation and improper interference with employee freedom of choice. Further, the solicitation of employee grievances, in the circumstances presented here, carried with it the implied promise that such grievances would be remedied. Such conduct is clearly unlawful. Accordingly/ we find that, by engaging in such conduct, Respondent violated section 8(a)(1) of the Act.

See also Montgomery Ward & Co. (1976) 225 NLRB 112 [93 LRRM 1077]; Litton Dental Products, etc, v. NLRB (4th Cir. 1976) 543 F.2d 1085 [93 LRRM 2714].

Returning to the facts before us, Sal Giumarra testified that the part of the letter quoted above was "simply a reiteration of the way we handled ourselves in the past" and was meant merely to remind employees of a long-standing grievance procedure which Respondent maintained. Giumarra described Respondent's assertedly long-standing grievance procedure as follows:

The foreman takes care of whatever they (sic) can, and then it goes to the supervisor, and then on to the superintendent, and obviously to me, I mean, if he can't handle it.

Taking Giumarra's description of Respondent's grievance procedure at face value, the procedure appears to have been completely passive in nature. Complaints were received but not solicited at the lowest supervisory level and then passed up the chain of command if resolution proved impossible without recourse to higher authority. Neither Giumarra's description nor any other evidence in the record suggests that Respondent regularly solicited grievances in an active manner. The letter distributed during the campaign appears to be Respondent's first actual solicitation of employee grievances.

We adopt the position taken by the NLRB in Swift Produce, Inc., supra, that if an employer as a regular practice solicits employee complaints and takes appropriate action, no violation of the Act would be entailed, nor would a basis for an objection to an election exist, if the employer reminded employees of this practice during a representation election campaign. But a solicitation of grievances during a campaign if no such practice has previously existed raises an inference that the employer is impliedly promising to improve the employees' work situation and is thereby attempting unfairly to influence his employees' choice about unionization.

In the context here before us, we find that Respondent did not regularly solicit employee grievances before the election campaign, and that the solicitation and implied promise of correction in Sal Giumarra's letter constituted an interference with employees' rights under section 1152 of the Act, in violation of section 1153(a).

Respondent excepts to the ALO's conclusion that Respondent violated section 1153(a) of the Act by distributing to its employees in early September 1977 a leaflet which could reasonably have been regarded by the employees as an implied threat that benefits would be reduced if the union won the impending election. The exception has merit.

While the NLRB has found violations of section 8(a)(1) of the NLRA based on statements made by employers during election campaigns which threaten employees with the loss of specific benefits, Sportspal, Inc. (1974) 214 NLRB 917 [88 LRRM 1533]; The Great Atlantic and Pacific Tea Co. (1971) 194 NLRB 774 [79 LRRM 1087], it

has found no violation in statements which claim that existing benefits are the .maximum the employer can afford, or which indicate that the employer will not yield to unreasonable contract demands by a victorious union in order to avoid a strike, or which point to the harsh economic realities of strikes as possible consequences of a bargaining impasse, J. R. Wood, Inc. (1977) 228 NLRB 593 [96 LRRM 1413]; Belknao Haradware and Mfg. Co. (1966) 157 NLRB 1393 [61 LRRM 1541].

This particular leaflet contained an implied acknowledgement that an obligation to bargain with the union would arise if the union were selected as the employees' representative. It threatened no loss of employee benefits, and contained no falsehoods or misrepresentations. We conclude, therefore, that the leaflet did not constitute either a violation of the Act or a basis for an objection to the election.

Respondent excepts to the ALO's finding that veiled threats, in violation of section 1153 (a) of the Act, were contained in another of the leaflets Respondent distributed to employees during the campaign. This exception lacks merit.

The leaflet stated that employees could be deported in the event of a strike:

... if you are not a citizen and engage in a strike, you could be immediately deported by the Immigration Service. Even if you have a green card, the law says that they must deport you!

For the reasons set forth below, we agree with the ALO that this leaflet did infringe upon employees' organizational rights in violation of section 1153 (a) of the Act.

Respondent's statement about the possibility of deport a tier, was a serious misstatement of applicable law. A holder of an immigrant visa, known as a "green card," has the legal status of an immigrant alien. As a permanent resident of the United States, such a person enjoys all the rights of a citizen except the right to vote. A strike or labor dispute involving a work stoppage or layoff of employees in an industry in which an immigrant alien is employed does not subject the immigrant alien to deportation. The federal regulation which Respondent cites as the basis for the statement in its leaflet, 8 CFR 214.2(10),^{7/} applies only to a petitioner for a non-immigrant visa. Holders of non-immigrant visas do not enjoy immigrant alien status.

Respondent's statement in its leaflet failed to reflect the crucial distinction between holders of immigrant visas (green cards) and holders of non-immigrant visas, and therefore erroneously indicated that even holders of green cards would be in danger of deportation in the event of a strike. Such a misstatement of the law in a communication to a workforce composed in large measure of foreign-born persons, some of whom held green cards and some of whom did not, was likely to cause confusion and anxiety and thereby to inhibit their organizational activities. See Sure Tan, Inc. (1978)

^{7/} 8 CFR 214.2(10) provides: Effect of labor dispute involving a work stoppage or layoff of employees. A petition shall be denied if a strike or other labor dispute involving a work stoppage or layoff of employees is in progress in the occupation and at the place the beneficiary is to be employed or trained; if the petition has already been approved, the approval of the beneficiary's employment or training is automatically suspended while such strike or other labor dispute is in progress.

234 NLRB 1187 [97 LRRM 1439]. It thereby violated section 1153(a) of the Act.^{8/} Whether Respondent's error was a good faith mistake is irrelevant.

Interference, restraint and coercion ... does not turn on the employer's motive or on whether the coercion succeeded or failed. The test is whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act. Nagata Brothers (May 23, 1979) 5 ALRB No. 39, rev. den. by Ct.App., 4th Dist., Div. 1, November 19, 1979. hg. den. December 31, 1979, cert. den. June 16, 1980. 100 S.Ct. 3010; Cooper Thermometer Co., (1965) 154 NLRB 502 [59 LRRM 1767]; American Freichtways Co., (1959) 124 NLRB 146 [44 LRRM 1302],

Respondent excepts to the ALO's conclusion that it violated section 1153 (a) through foreman Tino Espinosa's interrogation of employee Ramon Ramirez about employee organizing matters and Espinosa's threats to Ramirez that there would be economic reprisals if the UFW were selected as the employees' representative. We dismiss this exception as being without merit. The ALO's finding is based entirely on his credibility resolutions in favor of Ramirez and another of the General Counsel's witnesses and against Espinosa, credibility resolutions which are amply supported by the record in this testimony.

Respondent excepts to the ALO's conclusion that Respondent violated section 1153(a) when field superintendent John Murray and crew foreman Lupe Zacarias threatened employees with loss of employment if they signed authorization cards in support of the UFW. This exception is meritorious.

^{8/} As we find Respondent's statement regarding deportation to be objectionable and illegal conduct, we do not consider any of its other statements in this leaflet.

The record shows that a statement Zacarias made to the crew to the effect that employees who signed cards would lose the right to work for Respondent was immediately repudiated by Murray, Zacarias' superior in the chain of authority. Murray stated emphatically to the employees that no such consequences would follow from signing authorization cards and had Zacarias correct his statement for Spanish-speaking employees. The ALO erred as a matter of law in concluding that because of the chilling effect of Zacarias' remark on employee organizing rights, the remark constituted a violation of section 1153(a) "despite any subsequent clarification." (ALO Decision, p. 129.) The usual approach taken by the NLRB to cases in which threatening, coercive remarks by representatives of an employer are quickly repudiated in a manner that is likely to reach and be understood by all employees who heard the coercive remarks is to find that the initial remarks are neutralized by the subsequent corrections. See, e.g., Kawasaki Motors Corp. (1977) 231 NLRB 1151 [96 LRRM 1305]; Okidata Corp. (1975) 220 NLRB 144 [90 LRRM 1441]. We find that Zacarias' remark was neutralized by Murray's correction and we therefore dismiss this allegation of the complaint

Respondent excepts to the ALO's conclusion that it violated section 1153(a) by remarks of crew foreman Joe Giumarra, Jr., threatening employees with loss of jobs through mechanization if the UFW won the election. The exception is well taken.

One of the members of the crew of Joe Giumarra, Jr., testified that Giumarra told a group of employees that "if the UFW won, hours would be cut, and machines would take our jobs."

Giumarra himself acknowledged having a conversation with crew members regarding the possibility of job loss due to mechanization. According to his testimony, however, he linked this possibility to market factors:

I told then if the price of the grapes doesn't go up to the price of labor, then we'd have to mechanize and use more machines.

Helpful guidelines as to the limits which employers must observe in remarks to employees about unfavorable economic consequences which might result from unionization were established by the U. S. Supreme Court in NLRB v. Gissel Packing Co. (1969) 395 U.S. 575 [71 LRRM 2481], as follows:

[A]n employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a 'threat of reprisal or force or promise of benefit.' He may even make a prediction as to the precise effects he believes unionization will have on his company. In such a case, however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control.... 71 LRRM at 2497.

Here, according to Giumarra's testimony, he predicted that a combination of costs resulting from unionization and unfavorable market developments beyond Respondent's control might necessitate greater mechanization at the cost of some jobs. According to Giumarra's version of the conversation, the factors he cited were objective, and his prediction was based on probability. In the absence of a credibility resolution by the ALO in favor of either Giumarra or the employee witness, we resolve the conflict in favor of the party charged and accept Giumarra's version. We conclude that the General Counsel has failed to establish by a preponderance

of the evidence that Respondent violated section 1153(a) of the Act by this conversation, and we dismiss the allegation.

Respondent excepts to the ALO's conclusion that it violated section 1153(a) of the Act by threats crew foreman Jose Chavez made to two employees that they would lose their jobs as a result of mechanization if they angered their employer, the Respondent, by their activities in support of the UFW. This exception is without merit.

Employees Juan Carrera and Domingo Telles testified that foreman Chavez threatened them as indicated above after they had criticized field superintendent Al Giumarra in front of other employees. Chavez testified that he had reprimanded Carrera and Telles for criticizing Giumarra, but stated that he had not threatened that they would lose their jobs, and that "he didn't think" he had mentioned mechanization in his reprimand. The ALO credited the version of the conversation given by Carrera and Telles. In view of Chavez' uncertainty as to whether he mentioned mechanization in his reprimand, and in view of the absence from the record of any evidence which would undercut the ALO's credibility resolution in favor of Carrera and Telles, we conclude that Chavez made the threatening remarks with which he was charged, and that Respondent thereby violated section 1153(a) of the Act.

Respondent excepts to the ALO's conclusion that it violated section 1153(a) of the Act when, a few days before the election, field superintendent John Murray ordered employee Pedro Vera to turn down the volume on his portable radio, on which a song commonly associated with the UFW was being broadcast, and threatened to lay

him off. We do not find, merit in this exception. Vera testified that Murray told him angrily to turn his radio down and then, when Vera asked him why Respondent did not sponsor a show to which the employees could listen, threatened to give Vera "a three day rest." The evidence establishes that Respondent's employees are ordinarily allowed to listen to any radio broadcasts they wish without interference by foremen or supervisors. We infer from the timing of Murray's order to Vera and threat to lay him off, shortly before the election, that Murray's deviation from Respondent's normal tolerant practice was aimed at Vera's support for the UFW, which Murray was seeking to discourage. Accordingly, we find that Murray's conduct constituted a violation of section 1153(a) of the Act.

Respondent excepts to the ALO's conclusion that it violated section 1153(a) of the Act when Joe Giumarra, Sr., interrogated UFW organizers^{9/} and surveilled their organizing activities on one occasion. This exception is without merit.

The facts are not in dispute. On September 8, Joe Giumarra, Sr., asked UFW organizer David Velles and another organizer to identify themselves before he would allow them to speak to the crew of Jose Liceaga, which was then on its lunch break. They provided the requested identification. Giumarra remained near the crew for several minutes while Velles and the other organizer tried to interest the employees in the UFW's organizational drive. John Giumarra, Jr., then arrived on the scene and he, too, asked the

^{9/} We reject the ALO's apparent conclusion that Respondent violated the Act by questioning UFW organizers as to their identities. Our regulations require organizers to provide such identification. 3 Cal. Admin. Code section 20900 (e)(4)(B).

organizers to identify themselves. Finally, he and Joe Giumarra, Sr., departed.

A surveillance violation is established when an employer is shown to have taken action which has the tendency to inhibit protected activity by creating among employees an impression of surveillance. Hendrix Manufacturing Company v. NLRB (5th Cir. 1963) 321 F.2d 100 [53 LRRM 2831]; Time-O-Matic, Inc. v. NLRB (7th Cir. 1959) 264 F.2d 96 [43 LRRM 2661]; Pandol & Sons v. Agricultural Labor Relations Bd. (5th Cir. 1979) 98 Cal.App.3d 580. We find that Joe Giumarra, Sr.'s approaching and lingering near the site of the organizing efforts was likely to inhibit employee's protected organizational activities. We therefore conclude that Respondent engaged in surveillance in violation of section 1153(a) of the Act. Sunnyside Nurseries, Inc. (Sept. 11, 1980) 6 ALRB No. 52; NLRB v. Aero Corporation (5th Cir. 1978) 581 F.2d 511 [92 LRRM 1287]^{10/}

Respondent excepts to the ALO's conclusion that it violated section 1153(a) of the Act when field superintendent John Murray ordered UFW organizer Josephina Floras to leave Respondent's fields during the lunch period of a group of employees on or about September 9. This exception is without merit. Murray ordered Flores to leave after a heated exchange between them in the presence of employees. Taking into account this background and the fact that

^{10/} Member McCarthy disagrees with the conclusion that a surveillance violation was established here. It is his view that the presence of John Giumarra, Jr., and Joe Giumarra, Sr., in the fields at the time UFW organizers were taking access was not shown to be inconsistent with the performance of their usual functions as management personnel, and that there is no basis for inferring that their presence there was in any way out of the ordinary. Two Wheel Corp., dba Honda of Mineola (1975) 218 NLRB 436 [39 LRRM 1405].

Flores was legally entitled to be taking access to employees at that time, Murray's order that she depart constituted conduct likely to inhibit employees' organizational activities. It therefore violated section 1153(a) of the Act.

Respondent excepts to the ALO's conclusion that it violated section 1153(a) of the Act by foreman Vaughn Newhouse's surveillance of organizing activities of Sister Juliana de Wolfe on behalf of the UFW. We dismiss this exception. The ALO's finding was based entirely on the credibility resolution he made in favor of Sister de Wolfe and against Mr. Newhouse regarding Newhouse's approaching and lingering near her and his crew members on occasions when she was trying to organize them. The ALO's credibility resolution was based at least in part on Newhouse's demeanor as a witness. We find no basis in the record to upset this credibility resolution.^{11/}

Respondent excepts to the ALO's conclusion that it violated section 1153(c) and (a) by discriminatorily delaying the hire, and/or interrupting the work, of Teodolo Ortega and Enrique Aloytes because of the possibility they were UFW adherents. We find no merit in this exception.

Based on his credibility resolution in favor of Perez, Ortega, and Aloytes, which is supported by the record, the ALO found that foreman Manuel Del Campo asked Perez, when he sought work for his friends Ortega and Aloytes, whether Ortega and Aloytes were "Chavistas," and that, after letting Ortega and Aloytes join his

^{11/} Respondent "s witness William Romero, whose testimony tended to corroborate that of Newhouse, indicated that he had not paid much attention to the interactions among de Wolfe, Newhouse, and members of Newhouse's crew which were at issue.

crew, Del Campo interrupted their work and had then wait before recommencing because of his stated fear that, if they were UFW supporters, supervisor Roy Koenig and Respondent's owners, the Giumarras, would be angry that they had been hired. These remarks were likely to inhibit employees in the exercise of protected organizational rights and constituted a violation of section 1153(a) of the Act. Section 1153(c) of the Act forbids "discrimination in regard to the hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization." We conclude that Respondent discriminated against Ortega and Aloytes by delaying their hire and/or interrupting their work because of the possibility they were "Chavistas", and thereby violated section 1153(c) and (a) of the Act

Respondent excepts to the ALO's conclusion that it violated section 1153(a) of the Act when crew foreman Del Campo surveilled organizing activities of employees on his crew and interfered with conversations between UFW organizer Lalo Saldana and members of Del Campo's crew. The exception is without merit.

Del Campo admitted interrupting a conversation between Saldana and employees, but according to Del Campo the interruption was very brief and amounted only to a reminder to the employees that they had to return to work soon. According to Saldana's testimony, Del Campo interrupted two conversations, saying, among other things, that the UFW had not helped certain undocumented workers, with problems they were having in regard to immigration. The ALO credited Saldana's testimony rather than Del Campo's, and we find no basis in the record for overturning his credibility resolution. The

testimony of Javier Salcedo, which tended to corroborate Del Campo's testimony, is deprived of probative value by an inconsistent declaration Salcedo executed September 6, 1977, General Counsel's Exhibit No. 60, which stated that Del Campo urged employees to hide from union organizers and that Del Campo threatened to run out of the crew anyone who spoke with organizers.

Respondent excepts to the ALO's conclusion that it violated section 1153(a) of the Act by foreman Del Campo's alleged threats to fire employees who spoke with organizers. The only evidence offered by the General Counsel to support this allegation was the September 6, 1977, declaration of Javier Salcedo mentioned above. In view of the inconsistencies between that declaration and Salcedo's testimony during the hearing, we find that the General Counsel has not produced evidence sufficient to establish the violation alleged. Accordingly, we dismiss this allegation.

Election Results

Respondent excepts to the ALO's recommendation that the election be set aside because of the gravity and extent of Respondent's misconduct during the election campaign. We find no merit in this exception.

We have concluded that 31 agricultural employees were either discriminatorily discharged or discriminatorily refused rehire because of their protected union activity or support. In addition, we have found a number of section 1153(a) violations including interrogation concerning employee organizing, threats by supervisors, and surveillance of employees' organizational activity. While Respondent's workforce may be considered large in the

agricultural setting, we do not view the unfair labor practices found herein as isolated incidents which would not tend to interfere with the employees' free choice. Unfair labor practices were committed by nine different crew foremen, as well as by Dave Stanley and John Murray, Respondent's high level supervisors. Furthermore, Respondent's high management directly initiated some of the unfair labor practices, such as the surveillance by Joe Giumarra, Sr., We find that the large number of unfair labor practices found in the instant case, affecting, as they did, employees on several different crews, tended to interfere with the employees' section 1152 rights and their right to express a free and uncoerced choice in the election. These unfair labor practices constitute the "... typical case where the employer's illegal conduct is visible to others or is so flagrant in nature that it reasonably may be presumed that knowledge of the incident will spread among the other employees (both present and future)" M. B Zaninovich, Inc. v. ALRB (1981) 114 Cal.App. 3d 665, at 689.

In addition to the numerous discriminatory refusals to rehire, the discriminatory discharge, and various 1153 (a) violations, we have found that Respondent violated the Act by distributing a leaflet which contained threats to its employees during the election campaign. (See discussion at p. 24-26.) The leaflet threatened non-citizen employees with deportation should they participate in a strike. "Even if you have a green card, the law says that they [the Immigration Service] must deport you." This threat not only tended to interfere with, coerce and restrain

employees in the exercise of their organizational rights in violation of section 1153(a) of the Act, it also constituted objectionable pre-election conduct which tended to inhibit the employees in expressing their free choice of a collective bargaining representative.

Respondent's threat was based on serious misstatements of applicable law to a workforce composed in large measure of foreign-born persons, documented as well as undocumented. Indeed, Respondent would have had no reason to distribute the leaflet unless some of its employees were in the class subject to deportation. We find that the threats of ^deportation for engaging in protected activity, to a workforce such as this, were clearly coercive and tended to interfere with employees' free choice in the election. Undocumented workers are more susceptible to intimidation and coercion than other agricultural employees. Their peculiar vulnerability is easily exploitable and in this case Respondent apparently sought to exploit that vulnerability by distributing the leaflet threatening deportation.

We conclude that Respondent's unfair labor practices and objectionable pre-election conduct rendered employee expression of a free choice impossible. One of the most important rights granted to agricultural employees by the ALRA is the right to vote for the labor organization they want to represent them. This Board will not tolerate interference with this basic employee right. When we find patterns of discrimination and coercion and/or other acts and conduct which tend to inhibit employees in expressing a free choice in a representation election, we will set the election aside.

Remedies

Respondent excepts to the ALO's recommendation that one of its officials be required to read the remedial Notice to its agricultural employees. We decline to impose this requirement. We shall follow our customary approach and require that the Notice be read either by a representative of Respondent or by a Board agent, at Respondent's option.

Respondent excepts to the recommendation of the ALO that the UFW be permitted to engage in organizing activities among Respondent's employees during work time for two two-hour periods and that the UFW be permitted to take access during four access periods in the year following its next filing of a Notice of Intent to Take Access, with twice the number of organizers ordinarily permitted under our access rule, 8 Cal. Admin. Code 20900(e). This exception has no merit.

In fashioning an appropriate remedy in this case, it is proper to consider the substantial interference with employee rights which we have found herein. Expanded access remedies are appropriate to offset the lingering effects of an employer's misconduct during an election campaign and to help restore the employees' protected rights. Accordingly, we shall order Respondent to permit the UFW to take access to employees on Respondent's property during four access periods in the year following its next filing of a Notice of Intent to Take Access, with two organizers for every 15 employees in each work crew on the property. E & J. Gallo Winery, Inc. (April 17, 1981) 7 ALRB No. 10; Jack Pandol and Sons, Inc. (Jan. 11, 1980) 6 ALRB No. 1. In addition, the UFW will be

permitted to meet with Respondent's employees for two two-hour periods during regularly scheduled work time, for the purpose of conducting organizational activities. Access for this purpose may be taken by two UFW organizers for every fifteen employees in each of Respondent's work crews. Prohoroff Poultry Farms (Aug. 20, 1980) 6 ALRB No. 45; See Dave Walsh Company (Oct. 27, 1978) 4 ALRB No. 8.4. Charging Party's_ Exceptions

The Charging Party excepts to the ALO's failure to order Respondent to bargain with the UFW without another election having to be held. This exception lacks merit. Such an order may be issued when an employer commits such severe and numerous unfair labor practices as to make it unlikely that a fair election can be held. Harry Carian Sales (Oct. 3, 1980) 6 ALRB No. 55. While we have concluded that Respondent committed numerous unfair labor practices, we do not find that Respondent's misconduct has destroyed the election mechanism to the point that the possibility of holding a fair election in the foreseeable future appears unlikely. To remedy Respondent's misconduct, we have granted the UFW expanded access to Respondent's employees in order to offset any continuing adverse effects of Respondent's misconduct. We need not and do not reach the question whether authorization cards collected by the Union establish that it enjoyed the support of a majority of Respondent's employees.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Giumarra Vineyards Corp. and Giumarra Farms, Inc., its officers, agents,

successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging, refusing or failing to hire or rehire, assigning less desirable work to, delaying the hire or interrupting the work of, or otherwise discriminating against, any agricultural employee because of his or her union activities or other protected concerted activities.

(b) Engaging in surveillance, or giving the impression of surveillance, of any union agent or representative who is communicating with any agricultural employee(s) on Respondent's premises pursuant to 8 Cal. Admin. Code section 20900.

(c) Interfering with, restraining, or coercing any of its employees in the exercise of their right to communicate freely with and receive information from any union agent or representative present on Respondent's premises pursuant to 8 Cal. Admin. Code section 20900.

(d) Threatening any of its employees with deportation from the United States if they join or support the United Farm Workers of America, AFL-CIO (UFW), or any other labor organization, or engage in any other protected concerted activity.

(e) In any like or related manner interfering with, restraining, or coercing any agricultural employees in the exercise of their rights guaranteed by Labor Code section 1152.

2. Take the following affirmative actions which are deemed necessary to effectuate the purposes of the Act:

(a) Offer Jose Gamboa, Fidel Martinez, Emitterio Rodriguez, Juan Zapata Rios, Juan Carrera, Hector Carrera, and

Domingo Telles immediate and full reinstatement to their former or equivalent jobs, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay or other economic losses they have suffered as a result of their discharge, plus interest on such sums at the rate of seven per cent per annum.

(b) Offer Eulalia Mares, Maria L. Mares, Gilbert Aceves, Jose Garza, Rufina Romero Garza, Calextra Romero, Amabeli Encinas, Lorenzo Galvan, Leonardo Galvan, Samuel Manriquez, Juana Manriquez, Tony Ochoa, Dolores Ochoa, Teresa Ochoa, Adelina Gurrola, Teofilo Garcia, Josephine. Gonzales, Rosendo Gonzales, Teresa Perez, Rosa Perez, Alberto Perez, Celia Perez, Armando Perez, Eva Perez Guajardo, and Sofia Tellez immediate employment and make them whole, for any loss of pay and other economic losses they have suffered as a result of Respondent's refusal or failure to hire them, according to the formula stated in J & L Farms (Aug. 12, 1980) 6 ALRB No. 43, plus interest thereon at a rate of seven per cent per annum.

(c) Preserve and, upon request, make available to this Board and its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the backpay period and the amount of backpay due under the terms of this Order.

(d) Sign the Notice to Agricultural Employees attached hereto and, after its translation by a Board agent into appropriate languages, reproduce sufficient copies in each language for the purposes set forth hereinafter.

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent at any time during the payroll periods from August 28 to September 30, 1977.

(f) Post copies of the attached Notice, in all appropriate languages, for 60 days in conspicuous places on its premises, the period and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered, or removed.

(g) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its agricultural employees on company time and property, at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or employees' rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(h) Upon the UFW's filing of a written Notice of Intent to Take Access pursuant to 8 Cal. Admin. Code section 20900(e)(1)(B), permit the UFW to take access as provided by 8 Cal. Admin. Code section 20900(e)(3), utilizing two organizers for every fifteen employees in each work crew on the property. This right of

access shall encompass four 30-day periods within the 12-month period following the date of issuance of this Decision.

(i) Provide the UFW two two-hour periods, during work time, for it and its representatives to meet with employees on Respondent's property. The UFW shall present to the Regional Director its plans for utilizing the two two-hour periods. After conferring with both the UFW and the Respondent, the Regional Director shall determine the most suitable times for these two meetings. During this time, no employees shall be allowed to engage in work-related activities, although no employee shall be required to attend the meetings or organizational activities. All employees shall receive their regular pay for the time away from work occasioned by these meetings.

(j) During any 30-day period in which the UFW exercises its right to take access, provide the UFW with an up-to-date list of its current employees and the addresses at which they are living while working for Respondents, for each payroll period, without requiring the UFW to make any showing of interest.

(k) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps Respondent has taken to comply with its terms, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

IT IS FURTHER ORDERED that the representation election conducted in this matter on September 26, 1977, be, and it hereby

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is, set aside and that the petition for certification in Case Mo, 77-RC-16-D be, and it hereby is, dismissed.

Dated: August 31, 1981

RONALD L. RUIZ, Member

ALFRED H. SONG, Member

JEROME R. WALDIE, Member

MEMBERS PERRY and MCCARTHY, Concurring and Dissenting:

We respectfully dissent from the majority's decision to overturn the September 26, 1977, election at Respondent's operation. Based on the record before us, we believe the misconduct and unfair labor practices in which Respondent engaged were not sufficient in number or gravity to create an atmosphere fatal to free choice among Respondent's labor force, which was large in numbers and widely dispersed over an extensive area. It would be more accurate, we believe, to characterize the prevailing pre-election atmosphere as competitive rather than coercive. Respondent clearly waged an aggressive election campaign against the UFW, in some instances exceeding the bounds of permissible conduct. Remedies other than setting aside the election are available, and are being imposed, for those violations.

Aggressive election campaigns against labor organizations

are not in themselves against the law. They may, if undertaken properly, promote the statutory objective of encouraging free employee choice by insuring that employees understand all that is involved in the choices presented in an election of a collective bargaining representative. We believe that the employees here did understand the choice before them and were able to vote according to their own best judgment. Having applied this standard – the employees' freedom of choice – in upholding the results of elections won by a union, despite that union's misconduct during the election campaign, this Board should uphold the results of the balloting here. See Jack or Marion Radovich (Jan. 20, 1976) 2 ALRB No. 12; Let-Us-Pak (Dec. 7, 1976) 2 ALRB No. 60; Sam Andrews' Sons (Aug. 21, 1978) 4 ALRB No. 59; Triple E Produce Corporation (Aug. 21, 1980) 6 ALRB No. 46.

Dated: August 31, 1981

HERBERT A. PERRY, Member

JOHN P. MCCARTHY, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Fresno Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint which alleged that we had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we did violate the law by: (1) interfering with the right of our workers to communicate freely with and receive information from a labor organization; (2) threatening our workers with the possibility of deportation if the United Farm Workers of America, AFL-CIO (UFW), were to win the election and call a strike; (3) interrogating employees about their support of the UFW; (4) beginning during an election campaign to solicit employees' grievances and promising to correct problems; (5) discharging Fidel Martinez because he asked to be paid for time spent receiving job instructions and said he would take his complaint to the UFW; (6) refusing to hire or to rehire the following former employees and applicants for employment because we believed they supported the UFW or because they engaged in activities to promote employee rights:

Gilbert Aceves	Rosendo Gonzales	Alberto Perez
Hector Carrera	Eva Perez Guajardo	Armando Perez
Juan Carrera	Adelina Gurrola	Celia Perez
Amabeli Encinas	Juana Manriquez	Rosa Perez
Leonardo Galvan	Samuel Manriquez	Teresa Perez
Lorenzo Galvan	Eulalia Mares	Juan Zapata Rios
Jose Gamboa	Maria Mares	Emiterio Rodriguez
Teofilo Garcia	Dolores Ochoa	Calextra Romero
Jose Garza	Teresa Ochoa	Domingo Telles
Rufina Romero Garza	Tony Ochoa	Sofia Tellez
Josephine Gonzales		

The Agricultural Labor Relations Board has told us to send out and post this Notice.

We will do what the Board has ordered us to do. We also want to tell you that:

The Agricultural Labor Relations Act is a law that you gives and all other farm workers in California these rights:

1. To organize yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Because this is true, we promise that:

*j

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

Especially:

WE WILL NOT discharge any employee or refuse to hire or rehire any employee applicant or otherwise discriminate against any employee in regard to his or her employment because he or she has joined or supported the UFW or any other labor organization.

WE WILL NOT prevent, or attempt to prevent, UFW representatives or other union agents who enter or remain on our premises in accordance with the Agricultural Labor Relations Board's access rules from communicating with employees for purposes of organizing.

WE WILL NOT spy on, or engage in surveillance of, employees communicating with UFW agents or other union representatives.

WE WILL offer to reinstate Fidel Martinez to his previous job and to hire the other employees named above in the jobs they applied for, or in substantially equivalent jobs, without loss of seniority or other rights or privileges, and we will reimburse Fidel Martinez and each of the others for any loss of pay and other money losses they incurred because we discharged or failed to hire or rehire them, plus interest at seven percent per annum.

Dated:

GIUMARRA VINEYARDS CORP.
GIUMARRA FARMS, INC.

By: _____
(Representative) (Title)

If you have any questions about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 1685 "E" Street, Suites 101 & 102, Fresno, California. The telephone number is (209) 445-5668.

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Giumarra Vineyards Corp.
and Giumarra Farms, Inc. (UFW)

8 ALRB No. 24
Case Nos. 77-CE-48-D, et al

ALO DECISION

An election held September 26, 1977, among Respondent/Employer's agricultural employees resulted in the following tally of ballots: No Union - 900; UFW - 673; Challenged Ballots - 172. After a consolidated hearing on the many unfair labor practice charges and election objections filed by the UFW, the ALO concluded that Respondent/Employer violated section 1153 (c) and (a) of the Act by discriminatorily discharging several employees and failing or refusing to hire or rehire several other employees because of their support for the UFW. The ALO also found that Respondent/ Employer violated section 1153 (a) by interrogating employees about their union support, threatening employees with loss of employment and deportation as a result of their support for the union, surveilling conversations among employees and UFW organizers, and by beginning to solicit employee grievances during the election campaign, with the implied promise of improvement in terms and conditions of employment.

The ALO concluded that Respondent/Employer by its misconduct created an atmosphere in which employees were not able to exercise free choice. He therefore recommended that the election be set aside. He also recommended that the remedial order include a provision allowing the UFW to take access to Respondent/Employer's employees with twice the number or organizers ordinarily permitted under the access rule, 8 Cal. Admin. Code section 20900, and a provision allowing the UFW to talk with Respondent/Employer's employees for two two hour periods on company time. The ALO's recommended order also included provisions requiring Respondent/ Employer to hire or reinstate with backpay the persons who had been wrongly denied employment due to their union support. It contained a provision requiring that one of Respondent/Employer's high company officials read to employees the official Notice to Agricultural Employees, as well as standard mailing and posting remedies.

BOARD DECISION

The Board upheld the ALO's conclusions as to most but not all of the violations of section 1153 (c) and (a) of the Act which he found Respondent/Employer committed by failing or refusing to rehire applicants because of their support for the UFW. The Board further concluded that Respondent/Employer violated section 1153 (c) and (a) by discharging one employee and by delaying the hire or interfering with the work of two employees because of their union support, and by failing or refusing to rehire thirty-one applicants because of their support for the UFW, and that Respondent/Employer violated section 1153(a) by interfering with

Giumarra Vineyards Corp.
and Giumarra Farms, Inc. (UFW)

7 ALRB No. 24
Case Nos. 77-CE-48-D, et al

and surveilling communication between employees and UFW organizers; by threatening employees that their support of the UFW could result in loss of employment and in deportation; by assigning an employee to less desirable work in retaliation for his protected concerted activities, and by beginning during the election campaign to solicit employees' grievances, with the implied promise of improvement in terms and conditions of employment.

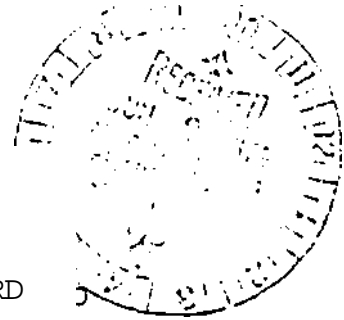
THE REMEDY

The Board concluded that by its misconduct, Respondent/Employer created an atmosphere in which employees could not exercise free choice in the election. Accordingly, the Board declined to certify the results of the election, and in its remedial order, in order to remedy lingering effects of Respondent's misconduct, provided that twice the number of UFW organizers ordinarily permitted under 8 Cal. Admin. Code section 20900 may take access to Respondent/ Employer's agricultural employees upon the UFW's filing of a notice to take access, and provided two two hour periods of company time for UFW organizers to meet with employees on Respondent/ Employer's property. The Board also order Respondent to offer employment or reinstatement, with backpay, to all discriminatees who had been illegally deprived of employment. Standard mailing, reading, and posting remedies were also ordered.

In a concurring and dissenting opinion, Members Perry and McCarthy stated that in their opinion the results of the election should be upheld because Respondent/Employer's violations of the Act and objectionable conduct did not create an atmosphere fatal to the employees' freedom of choice in the election.

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

STATE OF CALIFORNIA
BEFORE THE
AGRICULTURAL LABOR RELATIONS BOARD



GUIMARRA VINEYARDS CORP. &	)	Case Nos.	
GUIMARRA FARMS, INC.)		
	)	77-CE-48-D	77-CE-165-D
Respondent,	)	77-CE-50-D	77-CE-170-D
	)	77-CE-58-D	77-CE-182-D
and	)	77-CE-80-D	77-CE-189-D
	)	77-CE-82-D	77-CE-191-D
UNITED FARM WORKERS OF	)	77-CE-84-D	77-CE-192-D
AMERICA, AFL-CIO	)	77-CE-85-D	77-CE-193-D
	)	77-CE-88-D	77-CE-194-D
Charging Party.	)	77-CE-93-D	77-CE-197-D
_____	)	77-CE-105-D	77-CE-198-D
	)	77-CE-111-D	77-CE-202-D
	)	77-CE-113-D	77-CE-203-D
	)	77-CE-118-D	77-CE-207-D
	)	77-CE-123-D	77-CE-211-D
	)	77-CE-125-D	77-CE-218-D
	)	77-CE-128-D	77-CE-219-D
	)	77-CE-132-D	77-CE-222-D
	)	77-CE-135-D	77-CE-234-D
	)	77-CE-140-D	77-CE-235-D
	)	77-CE-141-D	77-CE-135-1-D
	)	77-CE-144-D	77-CE-151-1-D
	)	77-CE-146-D	77-CE-203-1-D
	)	77-CE-151-D	77-CE-150-D
	)	77-CE-155-D	77-CE-181-D
	)	77-CE-163-D	77-RC-16-D

Appearances:

John Patrick Moore and Ricardo Ornelas
of Fresno, California, for the General Counsel;

Marian Quesenbery and Darrel Voth of Western Growers
Association, Newport Beach, California, for the
Respondent

Carol Schoenbrunn, Martha Israel and Glenn Rothner of
Delano, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

Ronald Greenberg, Administrative Law Officer: The hearing
in this consolidated proceeding lasted 42 days,

beginning on April 11, 1973, and ending on August 8, 1978. In addition, pretrial conferences were held on March 6, March 23, and April 3, 1978. The proceedings occurred in Bakersfield, California.

The General Counsel, the Respondent, Guimarra Vineyards Corp., and the United Farm Workers of America, AFL-CIO, the Charging Party (hereafter the "UFW"), were represented throughout the proceedings. Briefs were filed by each of the parties.

The following unfair labor practice charges were filed by the UFW against Respondent which served as a basis of the complaint in this proceeding:

<u>Charge Number</u>	<u>Date Filed</u> ¹	<u>Date Served</u>
77-CE- 48-D	June 20, 1977	June 16, 1977
77-CE- 50-D	June 21, 1977	June 21, 1977
77-CE- 58-D	June 29, 1977	June 27, 1977
77-CE- 80-D	July 20, 1977	July 19, 1977
77-CE- 82-D	July 22, 1977	July 21, 1977
77-CE- 84-D	July 25, 1977	July 25, 1977
77-CE- 85-D	July 25, 1977	July 23, 1977
77-CE- 88-D	July 27, 1977	July 27, 1977
77-CE- 93-D	July 28, 1977	July 28, 1977
77-CE- 105-D	August 5, 1977	August 4, 1977
77-CE- 111-D	August 10, 1977	August 10, 1977
77-CE- 113-D	August 10, 1977	August 10, 1977
77-CE- 118-D	August 18, 1977	August 16, 1977
77-CE- 123-D	August 24, 1977	August 24, 1977
77-CE- 125-D	August 24, 1977	August 22, 1977
77-CE- 128-D	August 24, 1977	August 23, 1977
77-CE- 132-D	August 25, 1977	August 25, 1977
77-CE- 135-D	Sept. 21, 1977	August 29, 1977
77-CE- 140-D	Sept. 2, 1977	Sept. 1, 1977
77-CE- 141-D	Sept. 2, 1977	Sept. 2, 1977
77-CE- 144-D	Sept. 6, 1977	Sept. 5, 1977
77-CE- 146-D	Sept. 6, 1977	Sept. 6, 1977
77-CE- 151-D	Sept. 16, 1977	Sent. 12, 1977
77-CE- 155-D	Sept. 8, 1977	Sept. 8, 1977
77-CE- 163-D	Sept. 10, 1977	Sent. 8, 1977
77-CE- 163-D	Sept. 10, 1977	Sept. 10, 1977

¹Unless otherwise stated, all dates hereinafter refer to 1977.

<u>Charge Number</u>	<u>Date Filed</u>	<u>Date Served</u>
77-CE-170-D	Sept. 12, 1977	Sept. 12, 1977
77-CE-182-D	Sept. 15, 1977	Sept. 15, 1977
77-CE-189-D	Sept. 17, 1977	Sept. 17, 1977
77-CE-191-D	Sept. 20, 1977	Sept. 19, 1977
77-CE-192-D	Sept. 20, 1977	Sept. 19, 1977
77-CE-193-D	Sept. 20, 1977	Sept. 18, 1977
77-CE-194-D	Sept. 20, 1977	Sept. 17, 1977
77-CE-197-D	Sept. 20, 1977	Sept. 20, 1977
77-CE-198-D	Sept. 20, 1977	Sept. 20, 1977
77-CE-202-D	Sept. 21, 1977	Sept. 20, 1977
77-CE-203-D	Oct. 11, 1977	Oct. 7, 1977
77-CE-207-D	Sept. 24, 1977	Sept. 14, 1977
77-CE-211-D	Sept. 27, 1977	Sept. 24, 1977
77-CE-218-D	Sept. 29, 1977	Sept. 21, 1977
77-CE-219-D	Sept. 30, 1977	Sept. 28, 1977
77-CE-222-D	Oct. 4, 1977	Oct. 3, 1977
77-CE-234-D	Oct. 14, 1977	Oct. 13, 1977
77-CE-235-D	Oct. 14, 1977	Oct. 13, 1977
77-CE-150-D	Sept. 6, 1977	Sept. 6, 1977
77-CE-181-D	Sept. 15, 1977	Sept. 15, 1977

These charges were timely filed on Respondent.

UFW filed an objections petition, challenging the results of the election conducted among Guimarra employees on September 26. The petition was filed and served on October 5. The UFW's election objections were consolidated for hearing with the unfair labor practice complaint.²

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the arguments and briefs of the parties, I make the following:

² Substantial similarity exists between the unfair labor practice allegations and the UFW's election objections. The vast majority of objections will be discussed within the context of the unfair labor practices. The remaining objections and conclusions will be discussed in a separate section, "Election Objections."

FINDINGS AND CONCLUSIONS³

I. Jurisdiction

Respondent, Guimarra Vineyards Corp. was alleged in the complaint to be a California corporation engaged in agriculture in Kern and Tulare Counties, and was alleged to be an agricultural employer within the meaning of Section 1140.4(c) of the Agricultural Labor Relations Act (hereafter the "Act").

Respondent admitted these allegations. Accordingly, I find that Respondent is an agricultural employer and jurisdiction exists under the Act to resolve the matters in dispute.

Further, based on the pleadings and evidence, I find the UFW to be a labor organization as defined by Section 1140.4(f) of the Act.

II. The Unfair Labor Practice Allegations

The complaint serving as the basis for this proceeding is the second amended consolidated complaint (referred to herein as the "complaint"). It was dated and served on March 28, 1978. The complaint was further amended at the hearing. On August 11, 1978, General Counsel issued and served its third amended consolidated

³ Because of the extensive number of allegations involved, I am deviating slightly from the normal form of the Decision. In order to avoid a loss of continuity, I will combine the findings of fact, analysis and conclusions of law for each unfair labor practice allegation. A general statement of law section will precede discussion of the specific unfair labor practice allegation.

complaint. The lengthy complaint generally alleges that Respondent Guimarra violated Sections 1153(a) and (c) of the Act. Respondent generally denies it committed any violations of the Act.⁴

⁴ The amended complaints referred to above were preceded by three others. The original complaint and notice of hearing was issued and served on August 30, and September 1, respectively. Another complaint and notice of hearing was issued and served on September 16. The first amended consolidated complaint was issued and served on February 7, 1978.

During pretrial proceedings, the parties stipulated that the following individuals are supervisors as defined by 51140.4(j) of the Act: Sal Guimarra, Joe Guimarra, Sr., John Guimarra, Sr., John Guimarra, Jr., Alfred Guimarra, Dave Stanley, John Murray, Don Moody, Dan Radovitch, Paul Otoya, Roy Koenig, Joe Guimarra, Jr., Bill Ince, David Clough, Cecil Graves, Celso Domingo, Celestino Espinosa, Tony Miyagishima, Santana Soto, Manuel Navarro, Victor Pinson, Macario Pinson, C. V. "Piano" Padillo, Jose Liceaga, Horace "Cowboy" Hamilton, Lupe Zacarias, Jose Chavez, Andres Munoz, Jr., Manuel Del Campo, Jovita Medina, "Von" Newhouse, Claudio Carranza.

During the hearing, I conditionally accepted certain hearsay statements by alleged supervisors (Macclavio Espinosa, Maria Pinson, Esteben Pereida). The named employees served as second forepersons in crews run by Tino Espinosa, Victor Pinson and Tony Miyagishima respectively. All of them performed tasks of placing crews in rows and checking employees' work under the supervision of the foreperson. The evidence revealed that no second foreperson at Guimarra exercised independent judgment. None effectively hired or fired employees or recommended such action. In fact, aside from isolated instances of temporarily standing in for the foreperson, no other evidence of supervisory indicia was offered. I find these individuals not to be supervisors as defined by Section 1140.4(j) of the Act. *Anton Caratan & Sons*, 4 ALRB No. 103 (1978), citing *Commercial Fleet Wash, Inc.*, 190 NLRB 326 (1977); and *Montgomery Ward and Co., Inc.* 228 NLRB 750 (1977).

Accordingly, those statements conditionally accepted and attributed to the above-named second forepersons are hereby stricken from the record.

The complaint is structured as follows:
Paragraph 5 (Sections 5 (a) through 5(i)) alleges that Respondent unlawfully adopted and implemented a discriminatory hiring policy of refusing to hire farmworkers that supported the UFW during the 1973 strike against Respondent and other grape growers; Paragraph 6 (Sections 6(a) through 6(g)) alleges that Respondent, during the 5 months preceding the election, changed the terms and conditions of employment and discharged employees because they supported the UFW; Paragraph 7 alleges that Respondent announced and implemented a policy of refusing to hire farmworkers who supported the UFW; Paragraphs 8 and 9 allege that Respondent refused to hire certain individuals because of their support for the UFW; Paragraph 9 alleges that Respondent discriminatorily refused to hire workers because of their concerted activities to improve working conditions; Paragraph 10 (10 (a) through 10(f)) alleges Respondent interfered with UFW representatives attempting to solicit employee support; Paragraph 11 (11(a) through 11(n)) alleges that Respondent interfered with employee organizational rights by threatening and interrogating employees.

III. Background Facts

A. Guimarra's Operations

Guimarra maintains two farming operations in Kern and Tulare Counties, Guimarra Vineyards and Guimarra

Farms. The former includes the winery and vineyards, while Guimarra Farms deals with row crops and other farming. The same management and employees work both operations.

Guimarra Vineyards is divided into 8 farming areas containing 53 ranches varying from 5 to 640 acres. The Company office and packing shed are located in Edison, which is 55 miles south of Ducor, the location of late season grape harvesting. Early harvesting begins 20-30 miles south of Edison.

In addition to 32 varieties of grapes, Guimarra Vineyards farms 800 acres of oranges, 400 acres of plums, 1300 acres of potatoes, 2200 acres of cotton and 250 acres of grain.

Beginning in early July, Guimarra reaches peak employment in grapes, when it employs 2500 workers. The overall coordination of the crews and the farming operation is handled by the Company's President, Sal Guimarra. He personally starts a large percentage of the crews in most operations. He also personally supervises 10-11 crews at the initial start-up of the field pack, which begins in early July. Guimarra Vineyard's principal operation involves packing different varieties of table grapes. Guimarra is the premium quality and volume grower in the area, often establishing the price of grapes at the market place.

Five field superintendents (Sal Guimarra, Alfred Guimarra, John Murray, Roy Koenig and Dave Stanley) oversee a set of crews during the harvest. The superintendent's job is quality control over the crews, and he spends approximately 70% of his time with his crews. The 4 superintendents report to Sal Guimarra. Working under the superintendents, field supervisors are responsible for 2-3 crews. Their responsibilities include caring for the facilities, informing workers of field locations, watching work and giving the workers schooling. Each crew has a foreperson who is responsible for the daily direction and instruction of workers. The foreperson is assisted by a second fore-person or helper who primarily checks the work of the field workers.

The grapes ripen from south to north. Both the pre-harvest and harvest crews move in that direction. Pruning (cutting off excess wood) begins in December and ends in March. During the pruning, the vines are tied to trellises. This operation is followed by suckering which shapes the vine for proper length. Irrigation and tractor work begin in December and continue through the pre-harvest. During the growing, sulfur dusting occurs and pesticides are applied. Prior to the harvest, leaves are removed from the vines and the vines are thinned. Following girdling to increase the berry size, more thinning is done. Finally, the canes are raised and grapes are exposed in preparation for the picking.

80-85% of the grapes are packed during the field pack harvest. Crews enter the same fields successive times and continue picking. Drumming crews arrive after a few pickings and remove lower quality juice grapes which they loosely pack in larger boxes. These slightly trimmed grapes are then taken to the shed for packing and shipping. The final operation is stripping, which produces grapes for wine. Without trimming the grapes, pickers use plastic tubs and dump the grapes into gondolas.

During the field pack, workers usually work in groups of 3, 2 pickers and 1 packer. In some crews, as many as 4 pickers work with one packer. The packer remains at the end of a row. One picker starts picking in the middle of a row while the second picker works his/her way back from a white stake in the middle of the row. The picker is responsible for trimming and handling ripe grapes and placing them in a picking box. The packer receives these grapes while rechecking the bunches and straightening out any bad picking. The packer carefully places the bunches in a packing box and takes them to a weighing table in the avenue at the end of the rows. The boxes are then weighed, lidded and stacked.

B. Company Policies

1. Hiring and Firing

The Company's hiring and firing policies have not been reduced to writing. In 1977, Sal Guimarra stated

that the initial hiring included only those workers who worked for Respondent the previous season. No preferential treatment was given to less recent former Guimarra employees. However, Sal Guimarra emphasized that in 1974, he discussed personally with every foreperson the fact that it was immaterial to hiring whether a worker struck Respondent in 1973. Sal Guimarra stated that the nucleus of trained field packers return year after year. The Company normally will carry workers through tying and pruning into the harvest.

The crew foremen do much of the hiring. However, Sal Guimarra often makes final hiring decisions. Although Respondent now maintains a master hiring list, it did not have one in 1977.

The Company does maintain a policy of working with people, not firing them. Usually workers get 2-3 chances before being sent home for one day. If the problem persists, then the worker will be terminated.

2. Hiring Freezes

The Company policy regarding freezes is far more confusing. Apparently all 5 field superintendents know at all times whether their crew forepersons are hiring. Yet no records are kept as to the imposition of and removal of freezes.

More specifically, Sal Guimarra could not remember whether Tony Miyagishima's crew was frozen more than one

time during the Perlette harvesting. All crews apparently were frozen for some period late in the season when the crews moved to Ducor. Sal Guimarra stated that after a crew reaches its number in the first week of seedless picking, then hiring depends on business. Furthermore, if the quality of crew work is poor, then the crew is frozen from 1 hour to 2 months.

Although each superintendent who testified claimed knowledge of when crews were frozen, none could pinpoint when freezes were levied.⁵

C. History of UFW at Guimarra

The UFW began organizing workers at Guimarra in 1962. During the 1960s, the union began community organizations to identify and encourage crew leaders at Guimarra. In 1965 and 1967, the UFW struck the Company. In August 1967, mass picketing by UFW supporters was judicially enjoined. During those years, the UFW led a grape boycott against Guimarra grapes.

In 1970, Guimarra, as Delano area's leader in the grape industry, initiated contract negotiations with the UFW. John Guimarra, Jr., and John Guimarra, Sr., met with Cesar Chavez, Dolores Huerta and Jerry Cohen. The Guimarras invited other area growers into the negotiations.

⁵ My findings and conclusions regarding the Company's freeze policy are discussed in §5(e).

An area-wide contract was reached in 1970, and a 3-year agreement was signed. However, labor relations between the UFW and Guimarra did not become peaceful. Sal Guimarra stated that under the contract the hiring hall was a nightmare. Guimarra claimed there was no union cooperation, causing disruption of Guimarra's program.

In April 1973, contract renegotiation attempts began. During that period, the Teamsters claimed to represent a majority of Guimarra's workers. The Teamsters gradually gained contracts in Coachella and Arvin. Contract negotiations with the Delano growers broke down on July 28, 1973, and the strike began on July 30, 1973.

The strike brought 2 killings and hundreds of arrests. Although the major portion of picketing lasted only 3 weeks, Guimarra sustained serious property damage. Numerous windshields were broken and tires slashed. One wing of a labor camp was burned. Boxes in the fields were burned.

During the strike, Guimarra signed a contract with the Teamsters Union on August 9, 1973. In 1975, the Teamsters petitioned and won an election under the ALRA.

D. Guimarra's anti-union campaign in 1977

On April 7, Richard Chavez, Director of the UFW Delano Field Office, wrote the Company informing it of the Union's interest in representing the employees (UFW X I). With pending unfair labor practice charges

filed, the UFW, Guimarra, and the ALRB Regional Director for Fresno entered into a formal settlement agreement on May 12, which provided for expanded access (RX 49).

On July 15, John Guimarra, Jr. organized a meeting for all supervisors and forepersons to inform them of the current status of the ALRA. A meeting was conducted by Sal Guimarra and 2 attorneys from a Los Angeles law firm. More than 75 supervisory employees attended the 3 hour meeting. The Company distributed a guide to foremen in counteracting a union campaign (RX 56).

The field superintendents then became responsible for their districts during the long anti-union campaign. As John Murray stated, "it was part of my job to engage in a campaign on behalf of the Company." Sal Guimarra personally prepared speeches to be delivered to the crews by the superintendents. The superintendents also distributed numerous company handouts during the 2 months preceding the election. The coordination of the anti-union written campaign was done by Vice-President John Guimarra, Jr. He personally drafted many of the cartooned leaflets. On a regular basis, these leaflets were given to the workers by their crew forepersons.

E. Guimarra's policy regarding 1973 strikers

Maurice Jourdan, attorney for the General Counsel met with John Guimarra, Jr. on 2 or 3 occasions in August. The purpose of the meetings was to discuss the facts of

current unfair labor practice charges in an attempt at settlement. John Guimarra then intended to discuss the facts with the accused forepersons before again meeting with Jourdane.

According to Jourdane, when the Eulalia Mares family incident (§5(a)) was discussed, Guimarra responded, "Why should I hire her? She's a striker." Jourdane informed him that the law prevented him from discriminating against strikers. Guimarra then stated, "We don't want to hire strikers. We want people who are here everyday, who aren't lazy, who do their work." Jourdane then further explained the law to him.

John Guimarra, Jr. provided a slightly different version. He testified telling Jourdane that the "Company didn't have a duty to hire anyone just because they had gone out on strike." He stated that Guimarra hired people on the basis of job performance.⁶

IV. General Statement of the Law Governing the Case

Section 1152 of the Act guarantees employees "... the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their choosing, and to engage in other concerted activities for the purpose of

⁶ My findings and conclusions concerning the Company's policy regarding 1973 strikers are discussed in §5(a).

collective bargaining or other mutual aid and protection, and shall also have the right to refrain from any or all such activities. ..." Section 1153 (a) makes it an unfair labor practice "to interfere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152. In analyzing potentially violative conduct, Section 1148 directs the Board to follow applicable precedents of the National Labor Relations Act, as amended.

Section 1153 (a) is violated in numerous situations. While interrogations of employees' union activities are not per se unlawful, they must tend to restrain or interfere with the exercise of Section 1152 rights to constitute a violation. Maggio-Tostado, 3 ALRB No. 33, (1977) citing Blue Flash Express, 109 NLRB 85 (1954). When the interrogation clearly relates to the employees' union activities and preferences, it serves no legitimate purpose. Dave Walsh Company, 4 ALRB No. 84 (1978) Rod McLellan, 3 ALRB No. 71 (1977). Such questioning tends to restrain or interfere with the collective rights guaranteed by the Act. Akitomo Nursery, 3 ALRB No. 73 (1977); McAnally Enterprises, Inc., 3 ALRB No. 82 (1977).

In evaluating statements made by employers, the test for whether the remarks constitute an unlawful interference and/or threat is not the employees' reaction, but whether the statements would reasonably tend to interfere

with or restrain employees in the exercise of their guaranteed rights. Jack Brothers and McBurney, Inc., 4 ALRB No. 18 (1978); Rod McLellan Co., supra. Applying this objective test, statements made by employers to employees, implying that jobs might be lost or work opportunities lessened by a union victory without any facts showing economic necessity for such cutback, tends to interfere with those basic §1152 rights. Akitomo Nursery, supra. Furthermore, telling workers to go elsewhere if they want the union (Butte View Farms, 3 ALRB No. 50 (1977)), instructing them not to sign authorization cards, or loudly admonishing organizers in the presence of employees tends to restrain and coerce employees. Louis Caric & Sons, 4 ALRB No. 108 (1979).

Another type of 1153(a) violation involves surveillance or creating the impression of surveillance. Again, the objective test applies, requiring that General Counsel establish by a preponderance of the evidence that the surveillance had a reasonable tendency to affect employee exercise of statutory rights. Actual proof that the surveillance did interfere is not necessary. Merzoian Brothers, 3 ALRB No. 62 (1977); McAnally Enterprises, Inc., supra. An employer's comments to employees about their union activities as well as the activities of others leads to the impression of surveillance. Arnaudo Brothers, 3 ALRB No. 78 (1977). Furthermore, although a supervisor

may legitimately be in a work area contemporaneous with organizers talking with workers, evidence supporting the conclusion that the supervisor intentionally interjected his/her presence and listened to conversations necessitates finding a 1153 (a) violation. Dan Tudor, 3 ALRB No. 69 (1977); Tomooka Brothers, 2 ALRB No. 52 (1976).

In a similar light, an employer following organizers after their legal entry into the fields may constitute an access violation. Compliance with the access rule cannot be achieved when the communication which the rule is designed to facilitate is thwarted after the organizers' entry upon the property. Belridge Farms, 4 ALRB No. 30 (1978).

Under the Act, Section 1153 (c) makes it an unfair labor practice to discriminate "... in regard to the hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization." The test regarding discriminatory conduct under the NLRA was spelled out by the U.S. Supreme Court in Great Dane Trailers, Inc., 388 U.S. 26, 34 (1967):

First, if it can reasonably be concluded that the employer's discriminatory conduct was 'inherently destructive' of important employee rights, no proof of anti-union motivation is needed and the Board can find an unfair labor practice even if the employer introduces evidence that the conduct was motivated by business considerations. Second, if the adverse effect of the discriminatory conduct on employee rights is 'comparatively slight,' an anti-union motivation must be proved to sustain

the charge 'if the employer has come forward with evidence of legitimate and substantial business justifications for the conduct.'

Initially, General Counsel has the burden of establishing a prima facie case. Arnaudo Brothers, Inc., supra. One necessary element is anti-union motivation. Lu-ette Farms, Inc., 3 ALRB No. 38 (1977); Edwin Frazee, Inc., 4 ALRB No. 94 (1978); NLRB v. O.A. Fuller Supermarket, Inc., 347 F2d. 197 (C.A.5., 1967). An additional element is knowledge of the union activity. The Board and courts have long held that proof of knowledge of union activities may be established by circumstantial, as well as direct evidence. NLRB v. Tru-Line Screw Products, Inc., 324 F2d. 614 (C.A. 6 1963), cert, denied 377 U.S. 906(1964); NLRB v. Long Island Airport Limousine Service Corp., 468 F2d 292 (C.A. 2,1972) NLRB v. Wal-Mart Stores, Inc., 488 F2d. 114 (C.A. 8, 1973).

A discharged worker does not have to be "very active" in the union before an employer's knowledge may be inferred. AS-H-Ne Farms, 3 ALRB No. 53 (1977). Knowledge may be inferred from the record as a whole. Ibid.; Anton Caratan & Sons, supra.; S. Kuramura, Inc., 3 ALRB No. 4 (1977).

Furthermore, existence of independent grounds for discharge does not preclude finding anti-union animus as well. Tel Cal Land Management, 3 ALRB No. 14 (1977); AS-H-Ne Farms, supra. Where an employer provides

inconsistent reasons for discharge, such conduct creates an inference of discriminatory motive. Sunnyside Nurseries, 3 ALRB No. 42 (1977). A similar inference arises when a defense of poor work goes unaccompanied by a reprimand. Valley Farms, 2 ALRB No. 41 (1976). Further, a business justification may be found to be pretextual where the reason for discharge is not disclosed to the employee at time of discharge. Kitayama Brothers Nursery, 4 ALRB No. 85 (1979). And the fact that all union supporters are not discharged or laid-off does not preclude a finding that some similarly situated employees were discriminatorily terminated. Desert Automated Farming, 4 ALRB No. 99 (1979).

Similarly, refusal to rehire known union supporters due to their union activity violates Section 1153 (c). Ron Nunn Farms, 4 ALRB No. 34 (1978); Doctors Community Hospital, 227 NLRB No. 84 (1977). When discrimination is directed at a class of employees, the burden of showing discrimination as to each alleged discriminatee is met by showing that the group was treated discriminatorily and that each discriminatee is a member of the group. Kawano, Inc., 4 ALRB No. 104 (1979). In a similar fashion, when the employer's discriminatory scheme is to prevent or discharge union adherents from applying for work, General Counsel may establish a prima facie case in refusal to hire without showing proper application and availability for work.

Ibid. In refusal to hire or re-hire cases, the Board may infer a discriminatory motive from the fact that job applicants previously enjoyed a long and satisfactory work history with the Company.

Sahara Packing Co., 4 ALRB No. 40 (1978).

Under the Act, a discriminatory discharge may be effected constructively. To date, the Board has found that detrimental and material changes in working conditions in reprisal for union activities constitutes such a discharge.

Adams Dairy, 4 ALRB No. 24 (1978); Bacchus Farms, 4 ALRB No. 26(1978).

The NLRB has gone further, finding constructive discharge even when an employee was transferred to a more desirable job. The Board examines the record as a whole to determine whether the manifest purpose of such a transfer is to neutralize the employee's influence on behalf of the union during an organizational campaign. Associated Mills, 190 NLRB 113, 118 (1971); J. W. Mays, Inc., 147 NLRB 942, 962 (1964).

Finally, an employee cannot be discharged or refused rehire for engaging in "concerted activities." Such a discharge or refusal violates Section 1153(a) of the Act. In order to be protected under Section 1152, the concerted activity must satisfy the following elements: (1) there must be a work-related complaint or grievance; (2) the concerted activity must further some group interest;

(3) a specific remedy or result must be sought through such activity; and (4) the activity should not be unlawful or otherwise improper. Shelley & Anderson Furniture Mfg. Co., Inc. v. NLRB, 497 F2d 1200,1202 (1974).

V. Facts, Analysis and Conclusions Relating to
Alleged Unfair Labor Practices

A. SECTION 5 (a) – 58,64⁷

Eulalia Mares, her husband, and 4 daughters (Angelina, Hortencia, Juventina and San Juana), worked regularly for Respondent for more than 10 years. They were members of Jimmy Nakata's crew during most of that time. The last year they worked as a family unit was in 1973, the year UFW sympathizers went out on strike. A sharp division occurred within the family over that strike. Mrs. Mares, her husband and daughters Angelina and Hortencia sympathized with the UFW and left the fields in 1973. However, daughters Juventina (herein Tina Cortez) and San Juana chose to remain working for Respondent.

As soon the strike was called, the Mares family headed out of the fields in their car. Before exiting, they encountered Sal Guimarra. He told them-that he did not want to see them again. Sal also said that they

⁷ The numbers to the left of the dash refer to the Complaint. The subsequent numbers refer to the Objections.

should not step on his land again.⁸

During the ensuing strike, Mrs. Mares and her daughter Maria were active on the picket line. Joining more than 500 other strikers, Mrs. Mares daily picketed Jimmy Nakata's crew. At that time, Tony Miyagishima served as a second foreman or helper in Jimmy Nakata's crew. Although Tony does not recall seeing either Mrs. Mares or Maria Mares on the picket line, they testified that they viewed him and the rest of the crew on a regular basis.

Sal Guimarra recalls in detail the split that occurred in the Mares family between the pro-Chavez and pro-Teamster family members. San Juana continued to work for Respondent until 1976. Tina Cortez, presently employed by Respondent, continued to work for the company with only slight interruption. Both women worked together for the company until 1977, with Tina packing

⁸ Sal Guimarra denied making these statements. He testified that he talked to workers as they left the field, urging them to return to work the next day. He denied talking to any worker in a vehicle other than one Arab boy. However, Rufina Garza testified that Sal spoke to her family in their vehicle as they left the fields. He asked them to help him. In spite of some conflict in testimony, I credit Mrs. Mares' testimony. Sal Guimarra testified that the Mares family was a constant source of irritation over the years. In light of that attitude, on the first day of a highly emotional strike, it is reasonable to believe that Mr. Guimarra made those statements.

⁹A discussion will follow under Section 5(c), which alleges a refusal to rehire Tina Cortez and Sylvia Velasquez for a brief period in 1977.

and San Juana picking. In 1974, 1975, and 1976 they both began work during the last week in March or the first week of April. They began suckering and tipping and worked through the grape harvest.

At the beginning of 1976, Tina and San Juana worked with Jessie Juarez' crew. After two or three months into the season, they moved to Tony Miyagishima's crew. San Juana had problems with Tony. One day during the picking, Tony felt that San Juana was not moving fast enough. He became angry and pushed her. Realizing that he was angry, San Juana pushed him back. A physical altercation ensued. Many of the witnesses testifying at the hearing referred to that particular incident. San Juana testified that from that time, Sal Guimarra called her the "champ." However, Tony denied that the incident ever occurred.

During the 1975 harvest season, San Juana's feelings about the UFW changed radically. In that year, she signed UFW authorization cards and petitions on more than one occasion. She recalled one occasion where she had signed a card while Tony sat in his pick-up truck nearby. Tony denied any knowledge of her support for the UFW.

During the years following the 1973 strike, Tina Cortez made attempts to secure employment for other members of her family. Angry feelings within the family over UFW support subsided in 1974 after the death of Mr. Mares. Sal Guimarra recalls that a new unity existed within the

family, acknowledging that neither San Juana nor Tina were welcome in the family home prior to this time. In addition to Tina's efforts, in 1976, Mrs. Mares and Maria asked Tony for work in April. Tony refused them work in 1976, referring them to Sal. In 1977, on at least three occasions, Maria attempted to get work for herself and her mother from Tony. Mrs. Mares did not personally speak with Tony in 1977. In April, May, and June, Tony told them he had no work and that they should call him again. Maria's initial efforts began during the second week of April, 1977. During that same time, Tina was attempting to get jobs at Respondent for her sister Maria and her mother. Although unsuccessful, Tina continually attempted to get work for them.¹⁰

In addition to her efforts to secure employment for her mother and sister Maria, Tina spoke with Sal and Tony about work for San Juana in 1977. 'At the end of the thinning season in June, Tina asked Sal whether San Juana could come to work. Sal told her that the thinning season ended in 1 1/2 days, advising her to have San Juana come for the picking. He told her that when the picking started, "it would settle down and then we can have her go."

Tina recalls Sal telling her that he would not hire

¹⁰Although Respondent points to inconsistencies with the number of times and the manner in which the Mares family applied for work, there is no dispute that many attempts were made to secure employment for Mrs. Mares and Maria Mares.

San Juana. In August towards the end of the Thompson Seedless season, Tina Cortez filed a charge with the ALRB against Respondent. Sal approached Tina and asked her to drop the charges. She refused and a discussion followed. In response to his questions, Tina told him that she had filed a charge because the company had refused to put her family to work. At that time, Sal told her that he had instructed her to bring San Juana to work in the Perlettes. Tina disagreed with him. Sal said that there must have been some misunderstanding. At that point, Sal told Tina to bring San Juana to work. There is no dispute that San Juana never came to work at the company in 1977.

With regard to San Juana, Respondent takes the position that she was offered employment and she did not accept it. General Counsel acknowledges that a final offer was made during the latter part of the Thompson Seedless season, but contends that it was too late. San Juana testified that her troubles with the company began in 1975 after she signed a union authorization card in front of Tony's truck. She recalls that after that incident he began calling her a "Chavista." Further, Esteban Pereida, Tony's second foreman until March 1977, asked Tony about jobs for San Juana and Tina in 1977. Tony told him that he was not going to hire those women that year.

Sal insisted that he had in fact offered San Juana a job. Tina Cortez related the discussion that she and

Sal had towards the end of thinning. Sal emphasized to her that he was not hiring San Juana at that time because it was too close to the end of the thinning period. As Tina persisted in urging Sal to hire San Juana, Sal told her that he was not going to tell her the reason why he would not hire San Juana. Finally he said that San Juana was too much of a problem.

The company payroll register indicates that new people were in fact hired during the last few days of thinning. (RX 22 and RX 18) Those records show that two workers earned \$117.04 and another \$88.69, reflecting hiring towards the end of thinning. Further, these figures demonstrate that during the week ending July 9, for the first time in 1977, ten new employees worked for Resodent. These figures indicate that if Sal had been so inclined, he could have hired San Juana at the end of thinning.

The Mares family incident is put in a more understandable perspective by the testimony of Maurice Jourdane, an attorney for the General Counsel. In August 1977, while discussing the case with John Guimarra Jr., Mr. Guimarra said "Why should I hire her? She's a striker." Mr. Jourdane explained to him that the law prevented the company from discriminating against somebody because they were a striker. Mr. Guimarra then said "Well, we don't want to hire strikers. We want people who are here every day, who aren't lazy, who do their work." Mr. Guimarra explained the

incident in a different manner. He said that his emphasis was on the fact that the company was under no obligation to hire strikers. I credit Mr. Jourdane's version of the meeting. He was questioned extensively by Respondent's counsel. On cross-examination Jourdane revealed that he was quite amazed that Mr. Guimarra was misinterpreting the law. Mr. Jourdane testified that Mr. Guimarra's position made a strong impression on him because it was clearly in violation of the law.

That conversation together with other remarks from company supervisors, demonstrate that a discriminatory pattern was established in the case of Mrs. Mares, Maria Mares, and other identified 1973 strikers. Respondent, through Sal Guimarra and Tony Miyagishima, claimed that the only reason Mrs. Mares and Maria Mares were not rehired was the fact that they were poor workers. Tony recalled that the Mares family had been sent home two times when Jimmy Nakata was foreman. Tony also testified that when he was the second foreman in Jimmy Nakata's crew in 1973, he recalled that the Mares family did bad work. However, in conversations with Tina Cortez, Tony had told her that he did not want "Chavistas," because they were too much trouble. Perhaps most telling was Sal Guimarra's statement that had Mrs. Mares and Maria returned in 1974, the year after the strike began, he might have worked with them. However, three years later, he was unwilling to work with them. Sal

also testified that when Maria called him for a job, he gave her the stock answer that they were not hiring. However, he qualified that by saying that if they had been hiring, he would have first given work to people who had been employed the previous year. And then he added, "If you know someone's a bad worker, I just say we're not hiring."

Respondent's reasons for not rehiring Mrs. Mares and Maria do not withstand scrutiny. Although Sal stated that only Tina and San Juana (the two non-strikers) were "worth their salt," he had difficulty identifying which other family members were not good workers. Also, the company had been willing to work with the Mares family for more than ten years prior to the very bitter 1973 strike.

Under the circumstances, I find that Respondent, through its supervisors, consciously sought to identify 1973 strikers for purposes of refusing them employment.¹¹ The Mares family's strong UFW ties were well-known to Sal Guimarra and Tony Miyagishima. Tony had referred to them as "Chavistas" and too much trouble. Sal Guimarra had been incensed when they walked out on him in support of the UFW

¹¹I make this finding primarily based on the statements of John Guimarra Jr. regarding the Company's attitude toward '73 strikers as related by Maurice Jourdan. Furthermore, this finding is applied in subsequent sections of the Decision which involve identified 1973 strikers.

in 1973. Maria and Eulalia had been away from the Company for 3 years. Their unwillingness to return immediately convinced Sal not to give them another chance. San Juana's later support for the UFW brought on the same discriminatory treatment by the Company.

I therefore find that Respondent violated §1153(a) and (c) of the Act by refusing to hire Eulalia, Maria and San Juana Mares.

B. SECTION 5(b) - 62

Gilbert "Shorty" Aceves began work for Respondent in 1963. He worked steadily until 1972 for Jimmy Nakata's crew. In that year, Tony Miyagishima was second foreman in Nakata's crew.

In late June of 1973, Gilbert Aceves was employed by Robert Farms, when he went out on strike. He joined the strikers and picketers at Respondent in July and August of 1973. Each morning, with sign in hand, he would go to the fields and urge workers to honor the picket line and join the strike.

One morning on the picket line he encountered Tony Miyagishima going into the fields. While Gilbert talked to workers, Tony told him to go away and leave the people alone. Gilbert yelled at Tony to mind his own business, in that the strike was for the workers.

Gilbert Aceves, an active supporter of the UFW

since 1970, continued his strike activities at Respondent in 1973, visiting various crews on a daily basis through the month of August. During those weeks he sang union songs on the picket line with his "distinctive singing voice." Tony recalls seeing him on the picket line and remembers his singing.

In early June, 1977, Gilbert Aceves spoke to Francisco and Isabel Rendon, workers in Tony's crew, about working at Respondent. Isabel asked Tony for a job for Gilbert. Tony asked her whether he knew the job, and she replied he did. Tony told her to bring him to work on June 6. When they arrived that morning, Tony exclaimed to Isabel, "Oh, that boy has given me a lot of problems with the union." Because Gilbert needed shears, Tony told him to wait. Tony then reconsidered and decided not to hire Gilbert.

Tony relates that when he told the Rendons to bring their friend, Tony did not need workers. He claims that the only reason he told them to bring Gilbert was because they kept asking.¹² At the hearing, Tony testified that he did not hire Gilbert Aceves because he was a poor worker. Tony recalled watching Gilbert prune in 1971 or 1972. Tony was two rows away, where he observed Gilbert's work for 70-

¹²Tony had a similar reaction to seeing other union supporters (Section 5(g)) who he had instructed to meet him at 6:00 a.m. He claimed he told seven people to meet him out of "good will," even though he was unable to offer them a job.

80 vines, which was slow and poor.

However, this reason does not withstand scrutiny. Carlotta de la Cruz, a crew member, asked Tony that day why he had not hired Shorty. Tony replied that he had trouble with him regarding the union and he was a "Chavista." Carlotta testified that Shorty was a good worker. When Tony was questioned by Tina Cortez about Shorty, Tony told her that he didn't want "Chavistas" there because they were a problem.

Clearly, Tony had intended to hire the Rendons' friend until he saw Shorty. He immediately responded negatively, telling the Rendons that Shorty had given him a "hell of a hard time in '73." Tony's anti-union attitude in rejecting Shorty again was conveyed to crew members Carlotta de la Cruz and Tina Cortez.

Tony's refusal to hire Shorty was consistent with the Company's policy of refusing to rehire 1973 strikers. I therefore find that such refusal violated §1153 (a) and (c) of the Act.

C. SECTION 5(c) - 57

On June 11, Tina Cortez and Sylvia Velasquez were working in Tony Miyagishima's crew, when the crew was temporarily laid off because of lack of work. Tony received a message from the office to bring his people back on June 17, to tend to a special problem that had arisen.

When people came to work in his crew, Tony asked them for telephone numbers. Tony claims that Tina Cortez originally gave him her phone number in 1974. Subsequent to that time, Tony stated that she gave him three or four different numbers. He had a telephone number for her in June, but he did not call that number because he believed it was incorrect. Tony did not have a telephone number for Sylvia Velasquez, who first came to work for him in 1977. Ms. Velasquez testified that she did not have a phone, and she gave Tina's number to Tony.

On June 17, the crew received 45 minutes of instructions from Sal Guimarra prior to work in the morning. A spotted condition, pimienta, infected one side of 80-100 acres of grapes. The condition resulted from arrant chemicals sprayed on the grapes by the Company. In an attempt to salvage as many grapes as possible, Sal laboriously instructed Tony's crew along with the crews of Jesse Juarez and Pascual Sala in how to eliminate berries with large spots. An attempt was made to aesthetically save the bunches without spending too much time on each bunch. Tony's supervisor, Russ Carlson, called it a "unique" problem, one he never had seen. Sal called it his most difficult teaching situation.

The work went slowly through the morning. Sal gave another demonstration after lunch. He informed Tony that because of the difficulty encountered, no new people would

be allowed to work who had not been present for the schooling. The crews unsuccessfully worked at this job for 4-5 days.

Tina called Tony a few days after the special job began, having heard from Carlotta de la Cruz that the crew had returned to work. Tony informed Tina that only people present the first day would be allowed to work the duration of that particular job. Tina told him she would file a charge with the ALRB. He responded for her to go ahead and file a charge as this was Sal's idea.

General Counsel contends that Tina Cortez and Sylvia Velasquez were discriminated against because of their support for the UFW. In support of that position, Sylvia testified that Tony taunted her on one occasion, laughing and calling her "Chavista." When she asked him why, he continued laughing and calling her "Chavista," and then he called her a "cabrona" (female son of a bitch) three times. At a later time, Tony told Sylvia that he would not give her a paycheck. He told her to ask Cesar Chavez for the check. After reluctantly giving her the paycheck, Sylvia and Tina signed a UFW petition. Tony apparently then attempted to take back the checks.

General Counsel argues that the animus demonstrated by Tony on these occasions influenced his selection process as to who was called back to work on June 16. However, the evidence presented at the hearing paints another scenario.

Tony called the telephone numbers of most workers and went to the houses of others he knew.

Tina had brought Alvino Mata to the crew and introduced him as her new husband. She also got a credit reference from Sal Guimarra (GCX 53) so that she and Mata could purchase a trailer home. With this information, Tony did not call her old residence, the Mosesian Camp, where she had lived with Cesar Delgado. Tony tried to locate Sylvia on Main Street in Lamont on June 16, but he did not have the exact address.

Further, Tina relied on other people in the crew for information as to where the crew was working. Up to that time, Tony never had called her about coming to work. Although Tina never had missed work in the past because of not being notified, she did receive a call from Tony five days later on June 22, regarding the next work assignment. On that date, he got Tina's number from crew worker Carlotta de la Cruz. Rather than returning to work on June 23, Tina and Sylvia chose to return Friday, June 24, missing six work days in all.

Further, Respondent's payroll register (RX 22) indicates that 20 workers employed on June 11, did not return to work on June 17. Of these 20, 10 returned the following week and appear on the June 25 payroll. Thus, the claim that only Tina and Sylvia were discriminated against is not borne out by Company records.

Tony's antagonism towards the UFW as evidenced by the name calling and check incident does not make out a case of discrimination in this instance. The freeze order given by Sal was made without reference to either woman. The spray problem with the grapes was real. Had either or both women appeared at work on the morning of June 17, they would have worked with the rest of the crew. I therefore dismiss Section 5(c) of the complaint.

D. SECTION 5(d) - 82

Miguel Ramos, a 15-year resident of Lament, worked periodically for Respondent. While the UFW had a contract with Respondent, Ramos worked in Santana Soto's crew. Ramos, a long-time member of the UFW, left work at Mosesian when the 1973 strike began. During the strike, Ramos appeared on the picket line at Santana Soto's crew and at Soto's home.

According to Ramos' testimony, he and Santana had been friends for 8 years. Ramos testified that he had baptized Santana's niece and that Santana had been a witness to Ramos' wedding. Although admitting he knew Ramos, Santana claimed that he knew him casually and had no knowledge of the baptism or Ramos' wedding. Santana testified that he had not seen Ramos in 3 or 4 years.

According to Ramos, he applied for work with Soto in July when grape picking began. A friend, Vicente Ortiz,

informed Ramos that Soto was hiring. After asking him for work, Soto told Ramos that he wouldn't hire him because he was "very Chavista," and that if he met Chavez face to face, he would kill him. Ramos testified that Santana further stated that he didn't want "Chavistas" here, not even a one. Ramos then attempted to get work from Tino Espinosa, but Espinosa refused him work.

The Miguel Ramos incident presents a particular problem in analysis because both witnesses, Ramos and Soto, were unbelievable at times, and their stories totally contradict one another. In essence, Respondent's defense of this allegation is that Soto never heard from Ramos in 1977. Soto stated that he had not seen him in 3 to 4 years. However, Soto was aware that Ramos struck in 1973 even though Ramos had struck another ranch. Based on this testimony, I find that Soto was aware of Ramos' pro-UFW stance in 1973.

Miguel Ramos' testimony was unclear in certain respects. In an attempt to rehabilitate him, General Counsel offered into evidence a declaration signed by Ramos on August 10, 1977, which alleged that Ramos had asked Soto for work on two occasions, having testified he made only one such attempt (GCX 20). The first such attempt apparently was made in June and the second in mid-late July.

However, Soto's testimony was less believable. He denied any knowledge of Ramos' whereabouts since the 1973 strike. Soto merely stated that had Ramos applied for work,

Soto would have hired him.

In resolving the credibility dispute between Soto and Ramos, I find it necessary to refer to Soto's testimony with regard to Section 5(i) of the complaint. Soto flatly denied that he had a telephone conversation with Teresa Perez during the second week in July. Soto's testimony was contradicted by five members of the Perez family who were present when the telephone call was made. Under that section, I made a credibility resolution in favor of the Perez family's version of the incident.

Further, in testifying about the size of his crew, Soto testified that the limit was set by Sal during the Perlettes, and his crew size never exceeded that number during the remainder of the season. However, Soto's daily labor tickets belie that assertion. Although his crew size never exceeded 83 in July during the Perlettes, it increased to 98 during the latter part of August (GCX 42).¹³

I find that Ramos applied for work after a friend, Vicente Ortiz, got a job with Soto's crew.¹⁴ I find that Soto responded to Ramos' application with the above-discussed vitriolic remarks concerning Chavez and the UFW.

¹³Because of Soto's repeated unreliability as a witness, I resolve basic credibility in Ramos' favor.

¹⁴I find it unnecessary to determine whether one or two attempts were made by Ramos to secure employment with Soto. Because of the imprecision of Ramos' testimony, I set his date of application at 3 weeks before August 10, 1977, the second date mentioned in his declaration (GCX 20).

Soto knew that Ramos supported the Union, and Santana made it clear that he did not want any "Chavistas."¹⁵

Soto's refusal to hire Miguel Ramos violated Section 1153(a) and (c) of the Act.¹⁶

E. SECTION 5(e) -- 51

Rufina Romero Garza, her mother, father and six brothers and sisters worked for Respondent in Jimmy Nakata's crew from 1966 to 1973. On June 30, 1973, at 8:00 a.m., the Romero family joined other workers in striking Respondent. As Rufina recalls, the entire family exited the fields, and Sal Guimarra stopped the vehicle, asking Mr. Garza, "Didn't you say you were going to help us?" Mr. Garza replied, "Yes, but if you would help us also." Mr. Garza thanked him. Sal did not appear angry.

The family joined the picket line and picketed Jimmy Nakata's crew. Although he did not see them on the picket line, Tony Miyagishima, Jimmy's second foreman in 1973, recalls that the Romeros went out on strike in 1973. During their years with the Company, Tony and Jimmy

¹⁵Again, this finding is bolstered by my previous finding of a discriminatory company policy towards identified supporters of the UFW who struck area growers in 1973.

¹⁶The testimony by Ramos regarding his application for work with Tino Espinosa was vague and did not establish by a preponderance of the evidence that Espinosa denied him employment because of his support for the UFW. Therefore, this allegation, as it relates, to Tino Espinosa, will be dismissed.

socialized with them on occasion by coming to their house.

The Romero family did not attempt to get rehired at Respondent until 1977. Upon hearing that Respondent was hiring, Rufina Garza, her husband Jose Garza, and her mother, Calextra Romero, on or about July 11, contacted Sal Guimarra at Banducci's Restaurant. Rufina asked Sal for work for three persons. Sal inquired whether they had worked for Respondent. Rufina explained that the family had worked in Jimmy Nakata's crew for eight years. Sal told her to see Tony about a job.

Shortly after July 11, Rufina went to Tony's apartment. Tony sets the date at July 15 or 16. Paul Otoy, who was present at the apartment, testified that the visit occurred on July 20, one day before he changed assignments. In that both Tony and Rufina agreed as to the week in which the incident occurred, I find that. Rufina spoke to Tony on or about July 15 or 16. Rufina and her mother asked Tony for work. Tony told them that he had all new people and did not want difficulties with older people.¹⁷ Tony told her to again talk to Sal.

Prior to her second conversation with Sal, Rufina telephoned Manuel Navarro seeking employment. She spoke

¹⁷Both Paul Otoy and Tony denied that Tony mentioned "older people." However, Paul Otoy admitted that he was reading the newspaper during the conversation and not paying too much attention. I credit Rufina Garza's testimony, finding it consistent with Tony's general attitude towards UFW supporters.

with Maria Navarro, Manual's wife and helper. Maria told her that Manual's crew needed people and that she should have Sal send them to their crew. Rufina never spoke to Manuel and never related the conversation to Sal.¹⁸

On or about July 17 (the following Monday) Rufina again approached Sal at Banducci's Restaurant. Rufina told him that he suggested they come back in a week. Sal told her that he had no work.

At the hearing, both Sal and Tony testified that a hiring freeze was in effect. In fact, Sal stated that he did not recall the incident, but he would not have sent people to Tony during the first week of the harvest because Tony definitely was not hiring. Tony reinforced this testimony relating that he was having difficulty with one-quarter of the crew and a "bad work" freeze was in effect.

However, no intelligible pattern surfaced to explain when and why Tony's crew or other crews were frozen. Sal explained the freeze relating to the time the Garzas applied for work in the following manner:

"... the Perlettes, he was definitely on freeze. . . We simply weren't hiring at that point in time, if that's what it was."

Q. ". . . when did you freeze Tony's Crew?"

¹⁸Section 5(e) of the complaint alleges that Manuel Navarro as well as Sal Guimarra and Tony Miyagishima refused to hire Jose Garza, Rufina Garza and Calextra Romero. In that the alleged discriminatees never pursued potential jobs with Manual Navarro's crew, the allegation will be dismissed as it relates to Mr. Navarro.

A. "Well, he was froze--I don't know, because it changes, but I know that in Perlettes he was froze there temporarily because of the fact that we weren't doing a good job, with the one exception, so you could say he's off freeze when I said that he could put Juanita in there. And then how long he remained on that I don't know,"

Q. "So you remember two specific times when Tony was not hiring?"

A. "Yeah. Then, the in-between time, there's no way, because they're on freeze, they're off freeze."

If the explanation of freezes by the Company President was not confusing enough, the Company payroll register (RX 22) and daily field, labor tickets (RX 18) belie his statement that during "the Perlettes, he [Tony] was definitely on freeze."

On July 8, the day before the Perlette harvest began, Tony had 31 workers in his crew. The crew increased to 49 on July 9, the first day of the harvest. On the final day of the Perlette harvest, July 19, the crew had 62 members. Thus during that harvest period, Tony's crew doubled in size. Characterizing a 100% increase in crew size as a "freeze" creates an insoluble credibility problem for Sal Guimarra.

Moreover, an examination of the payroll register (RX 22) for the week ending July 23,¹⁹ reveals that five new people were hired that week without prior 1977 Company

¹⁹This payroll period coincides with the date when Rufina applied for work with Tony, July 15 or 16. Even accepting Paul Otoy's estimate of July 20, the same payroll period would be applicable.

earnings.²⁰

Thus, I find that the crew was not frozen at the time and that in fact, five new people without prior 1977 earnings with Respondent were hired during the applicable payroll period. I also find that Tony Miyagishima knew that Rufina Garza and the entire Romero family supported the UFW and struck Respondent in 1973. I find that Tony Miyagishima harbored animus towards workers who supported the UFW and struck Respondent in 1973. Further, based on blatant inconsistencies in the Company's "freeze" policy as explained by President Sal Guimarra, I further find that such policy existed in this case to deny employment to known UFW supporters.

I therefore find that Respondent violated Section 1153(a) and (c) of the Act by refusing to hire Rufina Garza, Jose Garza, and Calextra Romero.

F. SECTION 5(f)

Amabeli Encinas began working for Respondent on April 16. Amabeli worked approximately six weeks before quitting in May because of babysitting problems. During

²⁰During the week the following employees earned amounts equal to their 1977 total: Mario Diaz, \$130.72; Guillermo D. Cortez, \$191.87; Raul Hernandez, \$199.07; Gregario Leon, \$110.49, and Rodrigo Linares, \$72.22.

²¹See previous discussion in Sections 5(a)(b)(c).

the Weeks that she worked, Tony provided her and other workers with transportation to work.

Amabeli joined the UFW in 1963 and actively supported the Union from that date. A part of her Union activities included picketing such stores as Safeway and Arvin Liquors in Arvin, stores which Tony frequented.

During her term in Tony's crew, Amabeli normally wore UFW buttons on her shirt and union patches on her slacks. She openly talked about the UFW with workers in the crew. On one occasion, Tony asked her whether she was a "Chavista." Amabeli told him that she was. Tony also had conversations with other crew members regarding Amabeli's union status. In April, Tony told Herlinda Salinas that Amabeli was a "Chavista" while they waited for Amabeli in Tony's vehicle. Tony made a similar remark to Herlinda at his apartment. On another occasion, Tony told employee Olympia Leon that Amabeli was a "Chavista" when he spotted a car with union bumper stickers parked in front of Amabeli's house.

Angel Garza previously worked for Respondent in 1970 or 1971. In 1973, Angel went out on strike while working at Kovacavich Ranch. During the strike, he visited Tony's crew several times as well as the crews of three other supervisors. Angel's strike activities included leafletting and controlling the sound system in the fields. He used the loudspeaker when the UFW wanted to reach crews that were deep

within the fields or when the Union wanted to put out a fast message.

In 1975, when the ALRA went into effect, Angel often visited crews at Respondent, including Tony's crew, attempting to obtain authorization card signatures from workers. He also served as picket captain at Safeway in Arvin, where he observed Tony cross the picket line many times.

On August 27, Angel Garza and Amabeli Encinas went to Tony's apartment in search of employment. Minerva Leon answered the door and called to Tony that some people were looking for work. Amabeli wore her buttons and UFW patch. As they entered the apartment, Tony, upon seeing Angel and Amabeli, kept them close to the door.²² Tony asked them whether they knew how to pack. Both said they did. Tony told them he had no work, but he suggested that they contact Sal.

In refusing to hire Angel Garza and Amabeli Encinas on August 22, Tony claimed that a "bad work", freeze was in effect. Sal Guimarra testified that the crews moved to the Ducor area around August 10-12. Additional workers were not hired that year when the crews moved because of rot in the grapes, which caused a decrease in productivity. Sal

²²Amabeli testified that Tony originally called out that he had work, but that he denied them work when he saw them. Angel Garza did not testify that Tony said work was available. I credit the latter version based on the fact that Angel Garza clearly would have recalled that part of the conversation had it occurred.

Guimarra testified further that the freeze remained in effect until the conditions of the grape and number of people moving with the crew could be determined.

Tony's and Sal's explanation of a "freeze" appears to be supported by the payroll records in this particular instance. During the applicable payroll period (week ending August 27), 9 additional names appear on the payroll²³ that were not present on the preceding week's payroll (RX 22). Six employees transferred from Macario Pinson's crew and two workers, Rosaura Contreras and Paul Balderas Jr., previously appeared on five payroll lists with Tony's crews. The parties stipulated that the ninth employee, Maria E. Lopez, was not a new hire.

Thus, from a review of the payroll records, Respondent appears justified in refusing to hire Amabeli Encinas and Angel Garza. However, other considerations point toward discrimination against these Union activists. Both individuals worked for the Union in Arvin for many years. Because of the small size of Arvin, I find that Tony knew that they actively supported the Union. Their appearance regularly on the picket lines at Safeway and other establishments made their support apparent to patrons of those stores. Further, Angel Garza regularly visited Tony's crew during the 1973 strike and 1975 organizational drive. Garza's control of

²³Paul Balderas, Jr., Blanca E. Galvan, Odelia Galvan, Ana Rosa H. Cardenas, George A. Estrada, Ledia A. Estrada, Catalina Estrada, Maria E. Lopez, Rosaura Contreras.

the sound system in 1973 made him extremely visible. Further, Amabeli Encina's support for the UFW was questioned by Tony on at least four occasions while she worked for his crew. He confronted her personally and spoke to other crew members about it. As previously discussed, Tony demonstrated his disdain for the UFW on numerous occasions. Also, his denial that he mentioned "Chavista" in connection with Amabeli to three employees is contradicted by those employees' testimony. Most incredible perhaps was the fact that he never noticed any UFW buttons or patches worn by Amabeli Encinas at any time.

These facts in connection with the Company's policy not to hire people connected with the 1973 strike, as articulated by John Guimarra Jr., provides further evidence of discrimination. Tony Miyagishima repeatedly upheld that policy whenever confronted with applicants he knew supported the Union.

Furthermore, the Company's "freeze" policy has not withstood scrutiny in a previous allegation (see 5(e)). Having been advanced previously in contradiction of Company records, I view the policy as a whole with great skepticism. The records reveal that ten employees in Tony's crew were not replaced when the crew moved to Ducor. Six workers joined the crew from Macario Pinson's crew. Two employees previously worked for Tony. The previous employment status argument clearly applies as well to Amabeli Encinas. Thus,

the fact that eight new employees with Tony's crew had previous 1977 earnings with the Company does not nullify Tony's animus towards the UFW and his knowledge of Angel's and Amabeli's Union activities. The payroll records provide only one insight and not a justification in this case. In conclusion, I find that Tony denied Amabeli Encinas and Angel Garza employment because of their support for the UFW in violation of Section 1153 (a) and (c) of the Act.

G. SECTION 5(g) - 59

Lorenzo Galvan began working for Respondent in 1971. He struck the Company in 1973. He worked in Jimmy Nakata's crew, where Tony Miyagishima served as second foreman. Beginning in 1972, Lorenzo acted as Vice-President and Treasurer of the UFW Ranch Committee until the strike. In that capacity, he represented the Union in employee-employer grievance resolutions and disseminated information regarding Union meetings.

On Saturday, July 28, 1973, prior to the Monday morning strike walkout, Sal Guimarra visited Jimmy Nakata's crew, trying to convince workers not to go out on strike. Sal told the workers that Cesar Chavez didn't have the money or the ranch, and the workers stood to lose their cars, homes, and food for their children. When Lorenzo joined other workers leaving the fields on Monday, July 30, Sal angrily escorted him from the fields, with the bumper of

Sal's vehicle pushing Lorenzo's automobile. Sal told him not to step on his land again.

Samuel Manriquez and his wife Juana worked at Respondent from 1963 or 1964 to 1967, when they went out on strike. Samuel again worked for Respondent in 1973, when he struck the Company a second time. He actively participated in strike activities in 1973, picketing and talking to workers. During the 1973 strike, he often saw Sal Guimarra mocking the strikers and carrying a Teamster flag. Samuel Manriquez had known Sal Guimarra, having received daily class from him while Manriquez worked with Francisco Leija's crew.

Tony Ochoa worked for Respondent from 1949 to 1961. As a resident of Lamont, he joined the 1973 strike against Respondent, carrying a flag while picketing Jimmy Nakata's crew. In April 1977, he went to Paul Otoya's house seeking work. Paul referred him to Tony, who told Ochoa he had to be approved by Sal. Tony told him that Sal didn't like old workers who were involved with the strike. Tony Ochoa did not pursue a job with Sal at that time.

Samuel Manriquez contacted Santana Soto twice by telephone beginning in July, 1977. On Friday, August 19, Manriquez and Lorenzo Galvan went to Santana's home. On the following day, Santana said that Sal approved their going to work in Tony's crew on Monday. Santana gave Tony's number to Manriquez, and Samuel in turn handed it over to

Galvan. On Sunday afternoon, August 21, Lorenzo telephoned Tony. Lorenzo explained that he was calling for seven people who wanted work. Tony told them to meet him Monday at 5:00-5:15 a.m. at the intersection of Bear Mountain and Weed Patch in Lament. Tony asked Lorenzo if he knew where Ducor was located, the place the crew was working.

The group arrived at the intersection at 4:30 a.m., dressed for work. Tony Miyagishima later arrived and came over to Lorenzo's vehicle. Upon seeing Galvan, Tony said, "Oh, it's you." Tony said he was looking for three persons who had asked for work. Galvan told him that he had seven, and Tony replied that he could not hire them without asking Sal. When Galvan suggested he follow Tony, Tony told him he was wasting his time because Sal would not give them any work.

Tony took off angrily and Galvan followed for nearly 50 miles. While nearing Ducor, Tony had mechanical problems, stopping his truck and lifting the hood. Sal Guimarra then approached in his vehicle, backing up in front of Tony. Galvan, Manriquez and Ochoa exited their car and approached Sal. Ochoa spoke first about work, and Sal, looking him over thoroughly, said he didn't know him. Sal then looked at Manriquez and Galvan and told them he had no work for them because their work was rotten, very bad.

Again, the Company claims that the crew was "frozen" when it moved to Ducor. Sal explained that the grape was

rotten and that he was waiting to see the number of people needed. Tony testified that he did not tell Galvan that he had work. Rather, he had the group meet him to tell them there was no work. Although Tony acknowledges that the man on the telephone asked for work for seven people, Tony denies telling him he needed seven. Tony's explanation for the 5:00 a.m. meeting with seven people dressed for work was that it was an expression of "good will" on his part. Further, Tony said that he never discussed with Santana Soto the possibility of adding these people to his crew.

Soto's version contradicts Tony's denial. Although uncertain as to the exact date, Soto had sent five people to Tony's crew, when that crew was picking Perlettes.²⁴ Soto, who got his daughter Rita Rodriguez a job with Tony during the payroll period ending July 23 (RX 22), said he offered Manriquez the same opportunity, but Samuel did not go to the fields.

Clearly, both Manriquez and Galvan were well-known to Tony and Sal. Tony testified that he had known Lorenzo Galvan as the UFW shop steward before the strike. Galvan's Union activities were visible to members of Jimmy Nakata's crew because he often was called upon to represent the Union in grievances. When Galvan left the fields in 1973,

²⁴As previously discussed (see 5(e)) Sal testified that Tony's crew definitely was frozen during the Perlettes.

Sal told him never to return. Further, Mr. Manriquez and his wife had been involved in two strikes at Guimarra. Manriquez testified that he personally saw Sal often during schooling and picketing. Ochoa clearly was less visible, but he too participated in the 1973 strike.

The Company repeated a familiar pattern in rejecting these workers. Once they were identified as old people who engaged in the strike, they were refused employment. It strains credulity to believe a foreman would have seven people, dressed for work, meet him at 5:00 a.m. on a Monday morning to tell them personally in the spirit of "good will" that he had no work. Also, the usual pattern of a crew foreman not having authority to independently hire workers without the approval of the President of the Company repeated itself. Ironically, in the alternative, a defense was offered through Soto that Tony would have hired Manriquez earlier in the season at a time when Sal proclaimed Tony's crew was definitely frozen.

In these circumstances, Respondent violated Section 1153(a) and (c) of the Act by refusing to hire Lorenzo Galvan, Leonardo Galvan, Samuel Manriquez, Juana Manriquez, Tony Ochoa, Dolores Ochoa, and Teresa Ochoa.

H. SECTION 5(h)

Adelina Gurrola began working at Respondent in 1949, returning many subsequent years through 1973. During the

later years she worked with her husband, Teofilo Garcia.

Adelina served as Union steward in 1971 and 1972 with Jesse Juarez's crew and then with Tino Espinosa's crew. She also trained her successor as crew steward in Tino's crew. During 1970, the first year of the UFW contract, Teofilo Garcia acted as union steward in Jesse Juarez' crew.

Both Adelina and Teofilo attended a contract negotiations session between the UFW and 20 ranchers prior to the expiration of the 1973 contract. When Adelina went to the negotiations session, she informed foreman Tino Espinosa where she was going.

Adelina recalls the final days of the UFW contract, when the Company placed Teamster flags on trucks, at the office and on weighing tables. Adelina took one such flag from a table, broke the stick, tore the flag and stomped on it. At that time, she criticized Tino Espinosa for making propaganda for the Teamsters while the UFW still had a contract. On another occasion, Tino raised a Teamster flag high and offered anyone 75¢ to take it down. Adelina informed him that she was filing a complaint with the Union. She also informed Sal Guimarra of the incident.

During 1972, Adelina was informed by Teofilo that a T.V. crew was filming and that negative remarks were being made about the Union. Field superintendent Dave Stanley and forelady Jesse Juarez were present. In their presence,

and before television cameras, Adelina said that the workers wanted the UFW because of many Union benefits and the fact that employers had more respect for the workers. After this episode, Adelina filed a complaint with the Union against Stanley and Juarez.

On other occasions, Adelina complained to Jesse Juarez and Sal Guimarra when problems concerning non-dispatched workers arose. During the UFW contract, she and Teofilo also got into an argument with Sal because of high grass between the vines in a Ducor field. Because people were getting wet up to their knees, Adelina and Teofilo requested Sal to cut the grass. Sal told them to go to another ranch where the UFW had a contract. He also said there was no machine to cut the grass. Teofilo pointed to an adjacent field which recently had been cut. Sal became angry, but eventually he ordered workers to cut the grass.

Adelina related yet another confrontation with Sal Guimarra. While mediating a dispute for another worker, Sal angrily told Teofilo to get out. Adelina grabbed a box and told Sal, "Look, we're not going to leave. As long as this eagle is on this box, we are not leaving."

In 1973, when the UFW contract expired, Adelina and Teofilo joined the strike against Respondent. While picketing, they attempted to talk to Tino Espinosa. He refused their overtures, offering them the peace sign. In fact, after 1973, whenever Tino saw Adelina, he gave her the

peace sign without uttering a word. In 1975, she asked him for a job. He again responded with a peace sign.

On September 6, Adelina, Teofilo, Rosendo Gonzales, and Josephina Gonzales went to Tino's crew looking for jobs. The Gonzales had not previously worked for Respondent. However, they had picketed various Guimarra crews with loudspeakers during the 1973 strike, many times serving as picket captains. Teofilo asked Dave Stanley for work. Stanley replied that they were filled up. The group attempted to walk into the fields to talk to Tino, when they were stopped by one of Tino's sons.

On September 8, the four again attempted to get hired by going to Tino's labor camp. They arrived at 3:30-4:00 p.m. and waited 1-1/2 hours for Tino to arrive. When Espinosa arrived, Josephina Gonzales overheard him telling another worker, "I stayed way behind with the boxes. Tomorrow I'm going to take more people so that they will help me to take the boxes out." After Tino greeted the group, he told them that he had no work. He told them his crew was moving into the crazy box,²⁵ and he had a lot of people.

In Respondent's defense for not hiring these four individuals, Tino Espinosa testified that he would have given them work in the crazy box. He claimed they were

²⁵The crazy box, or caja loca, is a 42-pound packed box with juice grapes. It is used by drumming crews after the field pack of higher quality table grapes is completed.

only interested in an hourly wage, not the piece rate. Further, Tino claims that the work was too hard for a woman. Although 62 years old, Adelina is a large robust woman who picked in the large boxes in 1971 and 1972. When Teofilo and Adelina picked in the large boxes, Teofilo most often carried the boxes. However, on occasion, Adelina carried the 42-pound box. In 1977, Dave Stanley testified that women and some youngsters worked in picking in the crazy box.

Further, Respondent's payroll records do not support the claim that the crew was not hiring. Although Dave Stanley stated that Tino had stopped hiring in his crew prior to July 12, the crew size increased by 15 between that date and September 1 (GCX 33). In fact, during the weeks ending September 3, 10, and 17, Respondent employed seven workers without prior 1977 earnings with the Company, including three who were hired during the payroll period when this group applied for work (GCX 17).

Dave Stanley, while denying that he knew Adelina and Teofilo supported the UFW prior to 1973, testified that he saw them on the picket line that year talking to workers. Although admitting that he also saw them on the picket line, Tino Espinosa stated that he had no prior knowledge of their Union support or the fact that they had gone out on strike. Quite incredibly, Tino Espinosa, a foreman with Guimarra since 1966, claimed that he did not know the name of the

union that sent organizers to his crew in 1975 and 1977.

However, along with his purported lack of knowledge of Adelina's Union activities, he admitted avoiding conversation with her on occasions when he repeatedly gave her the peace sign because "Tino knows that that lady wants for Tino to do what she says in order-to file a complaint."

Clearly, no stronger case of discrimination exists involving 1973 strikers. Adelina Gurrola's Union activities during the years of the UFW contract were extensive and extremely visible. As evidenced by the above facts, she often complained to Sal Guimarra and Tino Espinosa about working conditions. She was threatened by Sal on numerous occasions, but she refused to relent in her representation of workers' rights. In Dave Stanley's presence, she boldly spoke to a T.V. interviewer in 1973, advancing her support for the Union. Her reappearance and application for a job at Guimarra in 1977 was quickly squelched by Dave Stanley, who instructed a helper that these people were not to be hired. Their rejection occurred at a time when Tino's crew was hiring people. And clearly, Rosendo and Josephia Gonzales were rejected because of their joint application for employment with Teofilo Garcia and Adelina Gurrola.

I find that Respondent, in implementing its policy not to hire 1973 strikers, refused to hire activists Adelina Gurrola and Teofilo Garcia along with their companions Rosendo and Josephia Gonzales in violation of Section 1153(a) and (c) of the Act.

I. SECTION 5(i)²⁶

Teresa Perez and her family worked for many years at Guimarra, prior to and during the Company's contract with the UFW. Teresa was working in Delfino Contreras' crew with daughters Estella and Eva in 1973, when that family unit struck Respondent. During the strike, Teresa picketed the crews of Contreras, Jesse Juarez, Santana Soto and others. She recalls talking to Soto over the loudspeakers during the strike, asking him to join the strikers "for our children and union benefits." Teresa Perez did not apply for work at Respondent in 1974, 1975 or 1976.

In 1977, Teresa and her daughter Graciela visited Soto at his home on July 10, when the Perlette harvest

²⁶At the hearing, General Counsel moved to amend the complaint, adding allegation 5(i). General Counsel represented that the facts of this allegation came to light during his investigation of 5(h), which arose approximately at the same time and also involved Supervisor Santana Soto. Respondent opposed said motion to amend. I granted General Counsel's motion. Respondent was given sufficient time to prepare its defense to 5(i) along with additional time in defending all allegations. The ALRB follows the NLRB rule that amendments will be allowed during the hearing when Respondent is given adequate opportunity to defend. Ron Nunn Farms, supra., 4.

Respondent further asserts that proof of Section 5(c) violates the basic "ground rules" I established at the outset of the hearing, disallowing significant amendments to the Complaint. However, the violation found under this Amendment involves a named supervisor in the Complaint committing acts related to those originally described in the Complaint. Omark-CCI, Inc., 208 NLRB 469(1974); Anderson Farms Company, 3 ALRB No. 67(1977).

began. Teresa asked for work for herself and four family members.²⁷ Soto asked her if any of them packed. When she replied that they were all pickers, he said that he would get packers and that she should call him the next day. On Monday, July 11, Teresa secured two packers, daughter Eva Perez Guajardo and Sophie Tellez, who was related to daughter Graciela Rivas by marriage. Both agreed to pack for the family.

On Thursday afternoon, July 12, daughter Celia Perez dialed Santana's telephone number for her mother, having looked it up in the directory. Celia heard the phone ring and handed it to her mother. Teresa spoke with Santana's wife because Soto was not at home. That same day, at around 9 p.m., daughter Rosa Perez dialed the phone and handed it to her mother, while Eva Perez Guajardo, Celia, and Alberto Perez listened to their mother's end of the conversation. Celia, Eva and Rosa all testified that Teresa referred to the party on the phone as "Santana" and that she told him that she had two packers, Eva Guajardo and Sophie Tellez. Eva further testified that she heard her mother say, "O.K.," and "I'll wait for your call." Soto never again communicated with Teresa Perez.

Soto recalls the initial visit with Teresa Perez

²⁷Soto testified that she only asked for work for herself. However, he testified that he told her to get packers. In light of the fact that he contemplated that more than one packer was needed, I credit Teresa's version that she asked for work for herself and four others.

at his home. However, he testified that she never called him back. He further stated that he would have placed her if she had produced a packer. Also he testified that he was aware that she and some of her family struck Respondent in 1973.

Respondent defends this allegation pointing to Teresa Perez' failure to pursue the job with Soto. However, Soto's animus towards the UFW as discussed in Section 5(d) again must be emphasized. In that incident, Soto told Miguel Ramos that he did not want "Chavistas" in his crew. Soto knew that Teresa Perez and some of her family joined UFW supporters in the 1973 strike.

By way of additional defense, Respondent contends that other Perez²⁸ family members are still employed by the Company and that Soto has other 1973 strikers presently in his crew. Clearly, Respondent's reference to its treatment of other purported Union supporters does not have any legal relevancy with regard to these allegations. Tex-Cal Land Management, Inc., supra.

When Teresa Perez applied for work, Soto decided not to hire her or the other family members because she and

²⁸Respondent referred to daughter Graciela as an example of a Perez family member who struck in 1973 and was rehired. However, Graciela testified that she did not go on strike. She left the Company's employ on July 29, 1973, when she was married to Ruben Rivas. The couple went to Texas after the wedding and remained there for four months. The disappearance of her name from the Company's payroll records apparently gave Respondent the impression that she had struck in 1973.

some of her family had participated in the 1973 strike. Soto simply ignored her attempts to get work. Again, a group of 1973 strikers discriminatorily was refused work. Respondent therefore violated Section 1153(a) and (c) of the Act by refusing to hire Teresa Perez, Rosa Perez, Alberto Perez, Celia Perez, Armando Perez, Eva Perez Guajardo and Sophia Tellez.

J. SECTION 6(a) -- 7

Manuel Ramos worked the grape harvest at Respondent in 1972, and he then again resumed work with the Company in Jose Chavez' crew in February, 1977. During the first two months of employment, Manuel recalls friendlier times with foreman Chavez, when Manuel brought workers to Chavez' crew.

Then during the early part of May, Manuel asked Jose for a pen to sign a Union authorization card. Jose refused him the pen. Ramos marks that time as the beginning of a changed relationship with Jose Chavez. Ramos testified that Jose accused Cesar Chavez of being rich and without shame, while making a gesture that Chavez was "screwing" the workers.

Ramos' problems continued on a day when he misunderstood a new crew assignment in Ducor. The crew was girdling and being paid 1 cent per vine, \$3.25/hour and a \$5 per day bonus if the workers did not miss work during a

given week. However, when the crew moved to Ducor, Ramos tried in vain to find the field that Jose Chavez had directed him to on the previous day. The other workers in Ramos' car also missed the day's work.

When Ramos returned the following day, he told Chavez that he had been given the wrong directions. The matter was reviewed by field superintendent Dave Stanley, who decided to pay Ramos the bonus because he had made an honest effort. Although Ramos was not paid immediately, he received his check covering the bonus on June 20 (GCX 7).

Ramos further testified that personal medical problems were exacerbated by the pressure at work. He recalls visiting a physician in late May for what was diagnosed to be a peptic ulcer (RX 19,20). Ramos stated, "I even got sick, and I blamed them for that."

When Ramos presented the medical bill to Jose Chavez, Chavez told him to wait for the superintendent. Ramos later was sent to the office with his bill. Apparently the bill was not covered by the Company's insurance policy.

In June, Jose Chavez' crew was picking plums. Ramos testified that he arrived one morning about a week after the plum harvest began and was unable to find a sponge to put in the bottom of his pail.²⁹ To compensate for the missing

²⁹Plum picking pails stand about 14" high, and a one-inch thick circular sponge normally covers the bottom of the pail to protect the fruit. The pails are passed out by the

sponge, Ramos folded a circular piece of cardboard and placed it in the pail.

Ramos began picking plums and dumping them into large boxes. Supervisor David Clough was standing near the boxes checking the fruit that day, and he observed Ramos dumping his pail. Clough testified that two-thirds of Ramos' bucket was padded. Clough observed two or three sponges in addition to the folded piece of cardboard. At that point, Clough called to foreman Chavez who was 20-25 feet away, instructing Chavez to send Ramos home for the day. Chavez observed two sponges, the cardboard and then another sponge. Clough left the fields while Ramos remained standing around for 5 or 10 minutes. Ramos was observed by Joe Guimarra Sr., who then instructed Chavez to put Ramos back to work. Ramos resumed picking plums without losing any work' time.

Later that day, Ramos was atop a ladder in the plum orchard when David Clough in a pick-up truck passed close to Ramos' ladder at a high rate of speed.³¹ Ramos testified

foreman in the morning and collected at night. Jose Chavez testified that each pail usually contains a sponge, but if it is missing, supervisors have extra ones.

³⁰Respondent has a checker count and record the number of pails the picker dumps into the large containers. Plum pickers are paid \$3.35/hour and 5 cents per bucket.

³¹Clough denied driving his truck in the orchard that day. Chavez testified that he had not seen David drive through the fields except at pruning. However, Domingo Tellez, who was on a ladder in the same row on the other side of the tree, testified that his ladder swayed. I credit his and Ramos' version of the incident.

that Clough yelled "Watch your ladder," while the truck nearly knocked over his ladder.

After the incident, Chavez told Ramos that David Clough had called him a "sonsacador,"³² which translates as one who pilfers, misleads or entices people away. Ramos also testified that Clough did not "meddle" any further. However, Chavez often commented that Ramos' bucket was "too full" or "too low."

During mid-June, Ramos decided to leave Respondent "right from [the time] that thing that happened to me on the ladder." He stated that "I even got sick, and I blamed them for that." Ramos left the job without telling Chavez or other Company supervisors. Ramos testified that "I wanted to take as much as I could, but I said to myself, my health is first."

Ramos was, convinced by ALRB. agent Margarita to return to Respondent. Ramos went to Jose Chavez' house 10-15 days after he left. When he knocked on the door, a little window or viewer on the door opened and then was quickly shut. Ramos stated that he recognized Chavez' face in the viewer. Ramos did not again attempt to get rehired.

³²Clough testified that he did not use that word, and that he does not speak Spanish. Considering the fact that Clough found the extra sponges and cardboard in Ramos' bucket, the statement most probably would flow from that event. The Spanish translation may have been provided by Chavez. I credit Ramos' testimony.

³³Clough testified that he saw Ramos padding a pail only on this one occasion. He never again checked him because that routinely was the foreman's job.

General Counsel argues that Ramos' difficulties began when he signed a Union authorization card in early May. From that point in time he was harrassed for his Union support, such harrassment causing a peptic ulcer which forced him to resign. General Counsel contends that the events leading to Ramos' quitting amounted to a constructive discharge, and that the incident concerning the extra sponges should be viewed as having a "deminimus effect."

However, General Counsel's case is fraught with contradictions. Most important perhaps is the fact that Ramos misstated the dates he saw a doctor about his ulcer. Rather than at the end of May (Ramos signed a card in early May), Ramos' peptic ulcer was diagnosed on April 26, prior to his signing an authorization card (RX 19,20). In fact, the records indicate that Ramos complained of abdominal pain as early as April 1976. Clearly his two-year medical problem ending in a diagnosed ulcer on April 26 cannot be labeled as part of a course of conduct initiated by Respondent which ended in a constructive discharge.

While crediting Ramos' version of conversations with Jose Chavez establishing knowledge of Ramos' Union support on the part of Chavez, I find that Ramos voluntarily left the Company's employ. His lay-off by Clough lasted only 10-15 minutes, and Ramos was not docked for any pay. Ramos' failure to find the Ducor location ended in his getting his bonus because superintendent Stanley decided Ramos had made

an honest effort. As for the incident with Clough's truck passing close to Ramos' ladder, I certainly do not condone Clough's actions of obvious anger after apparently sending Ramos home to then find him working again. However, to attribute Clough's anger to Union animus does not follow from the facts of this case. The fact that Clough never checked Ramos' work again demonstrates that the truck incident arose from anger that day and was not a part of a campaign to rid the Company of a Union supporter.

Furthermore, assuming that Clough called Ramos a "sansacador," that remark could be attributed to the "pilfering" incident and not necessarily to Ramos' Union attempts to entice people away from the Company. Clough explained that he sent Ramos home because he was "stealing from the Company."

Finally, both Ramos and Chavez acknowledged that much of the crew supported the UFW. By Ramos' estimate, all but 3-5 employees in the crew supported the Union. Chavez acknowledged that at least one-half of the crew had signed cards. The record is devoid of evidence demonstrating that Ramos was a leader of the union cause. He apparently signed a card with Chavez' knowledge, but the evidence indicates that many other crew members did likewise.

General Counsel has failed to sustain his burden of establishing that Ramos was discharged because of his Union support. As previously stated, I find that Ramos

voluntarily quit. Therefore, Section 6(a) of the Complaint is hereby dismissed.

K. SECTION 6(b) -- 75

Prior to the 1977 season, Oscar Carrillo worked for Respondent in 1972 and 1976. He was also a UFW member during those years. While picking and packing in 1976, he was chosen by field superintendent John Murray to become a foreman of a drumming crew. Oscar remained with the Company for only two weeks in that capacity, deciding instead to work for a contractor for more money.

Oscar returned to Piano Padillo's crew in April. He was assigned to a sub-crew that was supervised by Andy Munoz. Work went smoothly for Oscar until mid-June. On or about June 13, 1977, while weeding cotton, field superintendent Al Guimarra stopped four workers (David Zermano, Jose Luis Zermano, Salvador Valdez and David Martinez) apparently because the workers had fallen 10-15 feet behind the rest of the crew. Oscar Carrillo, from 3-4 rows away, observed Al Guimarra angrily point at the men saying, "You, you, you and you, out."

When David Zermano asked Andy Munoz the reason, Andy merely said those were Al's orders. While the four men began leaving the field, and in the presence of supervisor Munoz and superintendent Al Guimarra, Oscar Carrillo spoke to the group. Giving the men encouragement, Oscar told them not to

worry, they should go to the Union. David responded that they were going to the Union.

The men were laid off for 2-3 days. On or about June 15, Al Guimarra began telling the employees to work faster. Oscar, with Munoz and helper Pascual Sala within 20 feet of him, called out to workers in the field that they would all leave if any other worker were fired. With Zermano and the other three now back in the crew, this group of workers along with others asked Oscar Carrillo to speak for them as their leader. Because Oscar spoke little English, the group selected Johnny Guerro as its spokesman.

This group of workers blocked Al Guimarra's effort to have the crew finish another field on or about June 15, after 9 hours of work in intense sun. Then on June 17, with work completed, the crew was laid off.

On June 18, Oscar went to Piano Padillo's labor camp looking for more work. Padillo told him to wait for the picking to begin in mid-July. Carrillo returned to work in caning on July 4 in Ducor, when Andy Munoz and Joe Guimarra Jr. combined their crews for that purpose. Carrillo, who was waiting for the grape harvest to begin, continued with the caning crew until July 19. On that day, crew leader Nacho told the crew that only old pickers and packers should appear for the harvest on July 20.

Oscar and his wife with shears in hand arrived at Ranch No. 50 the next day, having gotten instructions from

his sister Leticia Carrillo, a helper and checker in Piano Padillo's crew. When John Murray saw Oscar he told him to "Go away. I will not give you any work." Leticia attempted to intercede, but Murray said Oscar was "too much trouble." Murray suggested that he work in the "crazy box" if he wanted work.

Oscar did two more days of caning work, but, having been excluded from the grape harvest, he decided to leave. Oscar testified that he had done the regular work of girdling and caning in order to get work in the grape harvest. He stated that workers could make more money harvesting grapes than caning or girdling.

John Murray testified that he had given Piano Padillo an order not to hire Oscar Carrillo and David Zermano on the first day of the field pack. Murray stated that Carrillo's work was not up to standard, having hired and fired him 3-4 times in the past 3-4 years.

Murray also testified that he learned that a Union election would be held at Respondent several weeks before the Company began to distribute literature. Murray was personally involved in campaigning for the Company, stating that as district superintendent he was responsible for his district.

As early as April 7, the UFW contacted Respondent informing the Company it intended to organize the workers and sought a voluntary access agreement (UFW XI). Further,

the parties entered into a settlement agreement providing for expanded access on April 12 (RX 49). Murray testified that he works very closely with President Sal Guimarra, receiving his orders from Sal. He further stated that all important work related matters are discussed with Sal.³⁴ Clearly, Murray became aware of the UFW's organizational efforts by July.

Piano Padillo denied knowing that Oscar Carrillo was a leader or Union supporter, but added that Carrillo was fairly smart and knew a lot of workers and people in Delano. He also stated that if John Murray had trouble with Oscar Carrillo's packing in 1976, it was before he promoted him to foreman. Padillo further testified that although he could not guarantee work in the harvest to workers, people who worked the pre-harvest generally got work in the picking.

These facts must be analyzed together with the fact that Oscar Carrillo stopped working on or about June 13 and urged four workers to take their grievances to the Union. According to Carrillo and David Zermano, Andy Munoz and Al Guimarra were within hearing range when Oscar made his charged statement. With confidence in Oscar's leadership abilities, the workers wanted him to speak for them. A few

³⁴As previously discussed, Sal Guimarra's animus towards the UFW because of the 1973 strike is well documented. I find that Sal's attitude was made known to John Murray, a district superintendent, who had major responsibility for 1500 acres of crops and the employees who worked those fields.

days later he assured them that they would all walk out if any other worker were fired. This statement again was made within earshot of Munoz and helper Sala.³⁵ Carrillo's concerted activities continued, urging workers to disobey Al Guimarra's order to complete weeding another field.

The only logical conclusion that can be reached is that these events came to John Murray's attention.³⁶ Carrillo encouraged workers to go to the Union rather than working out their problems with the Company. Carrillo's meddling with other workers' problems and becoming a leader within the crew most likely prompted John Murray to conclude that Oscar was "too much trouble." With Murray responsible for the Company's anti-union campaign in Padillo's crews, he chose to eliminate Carrillo as a factor in the campaign. It seems unlikely that Murray would designate him for supervisory duties in 1976, and then find that his work was "not up to standard" in 1977, just prior to the more lucrative grape harvest. Further, Murray's statement that he had hired and fired Carrillo during the past 3-4 years is in opposition to Carrillo's credited testimony that he had not worked for the Company during the

³⁵Although Sala denies hearing the statement, I credit Carrillo's version that both statements were made loudly enough for the foreman to hear.

³⁶I make my finding based on the fact that Murray kept close track of Piano Padillo's crews. Murray testified that he spent 70% of his time in the fields with his crews. Piano Padillo testified that John Murray worked with us all the time.

1973, 1974, or 1975 seasons.

I find that John Murray's refusal to allow Oscar Carrillo to work the grape harvest on July 20 amounted to a constructive discharge in violation of Section 1153(a) and (c) of the Act.

L. SECTION 6(c) -- 76

David Zermano began working at Respondent in 1972, when he was 13. He worked in Piano Padillo's crew helping his father, Benjamin, in pruning. In 1973 and 1974, he again worked with his father during summer vacation picking grapes. In 1975, he joined Andy Munoz' crew in January, with his father and brother, Jose Luis Zermano, and his mother, Maria.

During the summer of 1975, David became aware of an impending election at Guimarra. He and his brother supported the UFW, wearing buttons and putting a Union flag and bumper stickers on Jose Luis' car. At lunchtime, the Zermano brothers often carried and waved the Union flag in front of their foremen Bill and Andy.³⁷

David testified that supervisors treated him well

³⁷Maria Zermano testified that the entire family wore Union buttons in 1975, along with having a flag and bumper stickers on the car. She testified that the family's work was checked more often in 1975 after they displayed their support for the UFW.

before 1975. However, his brother stated that John Murray and Piano Padillo treated David badly prior to 1975, and worse after that year. Padillo testified that he had no problem with the production of the family unit in its quality and quantity. However, he did have complaints about David's work. Padillo found it to be very inconsistent.

David related that he did not field pack in 1975. During that year, David recalls John Murray criticizing his work on 1-2 occasions. 1975 was the first year that he and his father did not work side by side. In 1976, David began in tipping and then worked in picking. After one week of picking, John Murray laid him off. Murray had discovered small grapes in a box he assumed had been picked by David. Murray told David to go to work in the big boxes (caja loca). When David questioned Murray, John replied, "No more work here." David testified that he was left with the impression that he had been laid off for poor work.

In 1977, David did not work in grapes. On June 11, Maria germane asked Piano Padillo in the fields, "Why not give David some work?" Padillo said that Alfred (Al Guimarra) did not like David, but Padillo agreed to talk to Alfred. Padillo later told Maria to bring David the next day. When David arrived the next morning, Padillo seemed surprised. He told Mrs. Zermano, "Oh, no, no, no, --no more here, David, not in this Company." Padillo said that Alfred, Johnny (Murray) and he (Padillo) did not want

David working there. When Maria protested about how David would get home that day, Padillo said he did not care, while throwing a pan of water at her feet.³⁸ Padillo later apologized, telling Maria and Benjamin to ask John Murray for work for David.

On the next day, David was placed with Andy Munoz' crew hoeing cotton. When David and three other workers fell 10 feet behind other crew workers, Al Guimarra sent them home. When David left the fields, Oscar Carrillo approached the group, urging them to go to the Union. David responded that they were. When this laid-off group returned to work, they rallied behind Oscar Carrillo, presenting a united front for any other workers who might be sent home. In addition to these events, David also recalls Al Guimarra telling him on 1 or 2 occasions in 1977 that his work was poor.

The work in cotton weeding ended on June 17. Andy Munoz told the crew to report back in two weeks on July 5. On July 4 at 5 p.m., Benjamin Zermano went to Padillo's labor camp to confirm work for him and David on July 5. Helper Pascual Sala told him that only people who had begun

³⁸Although not an unfair labor practice, Padillo's conduct towards Mrs. Zermano, causing her great humiliation in the presence of crew members, was repugnant. Mr. Padillo and other supervisors at Guimarra, rather than learning the fine line between lawful conduct and unfair labor practices, would be well advised to establish relationships of "common decency" with their crew workers. See Curt Vonnegut, *Slapstick* (Delacorts Press, 1976), pp. 1-19.

work on July 4 would be given work the next day. On July 5, Benjamin and David went to talk to Andy Munoz early in the morning before work. Andy told Benjamin that there was work for him, but not for David. Munoz said that Alfred left orders not wanting boys in the fields. When Benjamin protested that he saw a lot of boys, Munoz repeated that those were Alfred's orders.

General Counsel contends that the above-described course of conduct amounts to discrimination against a Union supporter. I disagree. The record is replete with examples of David's poor work and the discipline he received. He was given numerous opportunities by Respondent. In 1976, although willing to continue his employment, John Murray decided that David no longer would be allowed to pick grapes. Then in 1977, Alfred Guimarra disciplined him during cotton hoeing, having warned him on previous occasions. In his discussion with Maria on June 11, Padillo apparently confused David with his brother, Jose Luis. When Padillo saw David at work on June 12, he told Maria that he (Padillo), Alfred and John did not want David working.

Murray gave Padillo an order not to hire Oscar Carrillo (see discussion in 6(b)) or David Zermano on the first day of field pack. While suggesting that Carrillo be allowed to join a drumming crew, Murray wanted David Zermano out of the Company.

Although Mrs. Zermano testified that the family

received worse treatment after their 1975 support of the UFW, all other family members remained working in the grapes without interruption in employment. As Padillo concluded, the family unit, except for David and his brother, produced grapes of Guimarra quality.

In the past, Respondent had moved David to less difficult jobs until it ran out of job assignments. Although David agreed with Oscar Carrillo that the group should go to the Union, I find that his discharge related solely to the poor quality of his work. I further find that although Andy Munoz explained that Alfred did not want boys as reason for not hiring David, John Murray independently had ordered Padillo not to hire David Zermano in field pack or in a drumming crew.

I find no violation of the Act in Respondent's discharge of David Zermano. Therefore, Section 6(c) of the complaint is hereby dismissed.

M. SECTION 6 (d) -- 61

Jesus and Maria Iniquez were hired into Macario Pinson's crew in May, and they did tipping with that crew until early July when the picking began. During the tipping, Jesus and Maria encountered a problem with the foreman. Pinson told a group which included the Iniquezes, Eulalia Trevino, her daughter and Mercedes Martinet, that they were working too slowly and that he would have to send

them home for a day. Pinson testified that Jesus responded, "I wish we got the Union." Jesus recalls telling the others that they should take their grievance to the Union. Pinson then decided not to send them home.

About a week and a half after this incident, representatives of the ALRB came to Pinson's crew to distribute literature and explain workers' rights. Jesus recalls the representatives telling the crew that they were free to talk to anyone. That same day, Pinson told his workers that they did not need a union. He said it would not be any good. He also warned workers against signing with the Union. Jesus told Pinson that he supported the Union. When Jesus attempted to talk to other workers about the Union, he found them reluctant to talk openly while Pinson was present. Jesus asked Pinson why the Company had accepted the Teamsters and were unwilling to accept the UFW. Pinson ignored these inquiries.³⁹

Jesus further testified that he would invite Union organizers to eat lunch with him. Iniquez observed that most other crew members preferred not to converse too openly with the organizers. UFW organizer Luce Murguia visited

³⁹Pinson denies knowledge of any further conversations regarding the Union other than the initial remark made by Jesus which involved taking the group's grievance to the Union. I found Jesus Iniquez to be a particularly believable witness. On the other hand, Pinson often wavered in his testimony, not certain of events. I therefore credit Jesus Iniquez' recounting of subsequent conversations about the Union between the two men.

Pinson's crew when the picking began. He recalls passing out leaflets one day before work. Pinson, while moving the crew to another field, told the workers that those who wanted to stay with "Chavez" should remain and those who wanted to go to work should go with him.

Jesus recalls another day when Pinson was passing out Company literature (GCX 8). Making a gesture of throat slitting, Pinson told workers that "he who signs for the Union is signing his own check."

On July 9, Pinson's crew began picking grapes. On July 26, Sal Guimarra arrived in the fields late in the afternoon, where Pinson's crew was working. Sal inspected a box or two and called over Macario Pinson. Sal told Pinson to send the group (Jesus, Maria and Philippine packer, Paul) home. The group promptly left the fields. That night, Jesus telephoned Pinson from the UFW office in Lament to clarify Sal's order. Jesus asked Pinson whether the reason for being sent home was Iniquez' work. Pinson responded that he didn't want any more problems and hung up. When Jesus returned to the fields the following day, Pinson told him, "I don't want to see you any more." Jesus promptly left the fields.

Respondent argues that Jesus and Maria Iniquez were not good workers and that was the sole reason for their discharge. Supervisor Dan Radovich, who supervised Pinson's crew from May 25 to the end of August, testified that he had

problems with Jesus and Maria. In the tipping, Radovich testified that they were slower than the majority, they miscounted bunches and they left weak bunches while dropping strong ones. During the period between May 26 and July 8, Radovich recalls correcting their work 12-14 times. Radovich never personally spoke to them, having the foreman or helper make the correction. Although Radovich never sent them home during the pre-harvest, he testified that he intended to if they didn't straighten up.

With regard to problems Radovich had with their picking, he stated that they were slow and didn't clean the bunches properly. They were picking stingy bunches of water, hard and shot berries with rot.

Radovich's assessment of their work basically was corroborated by foreman Pinson. Pinson testified that he showed them every day in class the proper way of picking. Pinson also stated that he was having trouble with the packer, who was packing bad grapes.⁴⁰ On the day that Sal stopped the group, Pinson recalls being called over by

⁴⁰Dan Radovich testified that it was the packer's job to trim fruit and eliminate rot, waterberries and damaged grapes. Radovich further testified that some of these things would have been eliminated by the packer if he were doing his job. Radovich acknowledged that the packer was not doing his job, having inspected one of his packing boxes that had a lot of bad fruit in it. Radovich admitted that they had problems on and off with that packer.

Foreman Manuel Navarro, giving testimony regarding Section 6(g) of the complaint, stated that it was the packer's responsibility to make sure the grapes were decent.

Radovich to inspect rotten and cracked berries in the boxes. Radovich instructed Pinson to fire them immediately. Pinson testified that he had never fired anyone before, and but for Radovich's order, he would not have fired them. Pinson also stated he had corrected their work 100 times in two weeks, and that he had not found it necessary to criticize any of his other workers.

In his testimony, second foreman Jesus Romo recalls daily problems of Jesus and Maria lagging behind in the tipping. He also recalls correcting them daily in picking because of dirty grapes, waterberries and small grapes. On the morning of their discharge, Romo informed Pinson and Radovich of dirty fruit he had found in their boxes. However, when he later checked Jesus' box, the grapes were clean to Rome's satisfaction. In fact, Romo then testified that he was not dissatisfied with Jesus' and Maria's work for a 2-3 week period. Although Radovich and Sal Guimarra found fault with the Philippine packer, Paul, who packed for the group, Romo testified that he watched the packer as closely as Jesus and Maria and found that the packer's work was satisfactory.

All supervisors, Romo, Pinson, and Radovich denied any knowledge of Jesus or Maria supporting the UFW, wearing Union buttons or having bumper-stickers.

It is clear from the above evidence that Maria and Jesus were not the best workers in the crew. However,

their firing runs counter to a policy established in 1972 by Sal Guimarra. Workers were not fired until they had been sent home for 1-2 days. If the problems persisted after they returned, then the Company's policy was to fire them. Radovich testified that "if this would have happened to somebody else and we hadn't had-been having any problems, we'd probably have overlooked it."

Radovich further admitted that he had never fired workers without suspending them first. When questioned about the previous 12-14 instances of poor performance that went unpunished, Radovich stated that they were minor, and no reason to "make a federal case out of it." Both Romo and Radovich acknowledged that Jesus and Maria sometimes did a fine job, and "then they'd taper off." Sal Guimarra testified that from "time to time we were making some progress" with the group.

When Radovich was questioned about when he learned of the upcoming election, three times he stated that he did not recall. However, he finally acknowledged that he learned of it during the pre-harvest.

Although the evidence suggests two possible conclusions, I find one conclusion more compelling. Crew supervisor Radovich on July 26 seized an opportunity to rid the crew of two Union supporters. Pinson had expressed his animus towards the Union to Jesus Iniquez on two occasions. Jesus' response to a threat of being sent home was that he

would go to the Union. Pinson decided not to pursue his intention' of sending them home. Iniquez persisted in his support of the Union, talking to workers and organizers and further questioning Pinson the day the ALRB agents came to the fields.

The most logical inference that can be drawn from the evidence is that Radovich, knowing that Sal wanted them sent home for one day, took it upon himself to permanently discharge two Union supporters. In order to accomplish this, he had to act in contravention to established Company policy of not discharging workers without first sending them home. Radovich, who had been a supervisor with Respondent since 1973, admitted that Jesus and Maria were the only workers he had ever fired without a previous suspension. Further, Radovich acknowledged that most of their previous indiscretions had been "minor." A logical conclusion that flows from these facts is that he fired them for their support of the UFW.

I therefore find that Respondent violated Section 1153(a) and (c) of the Act by discharging Jesus and Maria Iniquez.

N. SECTION 6(e)

Ronnie Guillen was hired by Piano Padillo in April to do deleafing in Andy Munoz' crew. Guillen worked steadily until the end of July. When the UFW's organizational

campaign began, Guillen listened to organizers and read the leaflets they distributed.

On July 26, Ronnie informed Munoz that because he was going to the UFW Clinic at 40 Acres, he would miss the next day's work. Munoz said O.K. That same day at lunch, after one of the Guimarras had visited the crew, Guillen recalls Munoz saying that the Company was going to pay us more so we wouldn't vote for the Union. Guillen responded that he would still vote for the Union if they didn't treat us right.

On July 28 at about 5:20 a.m., Guillen went to Piano Padillo's labor camp in order to take the Company truck into the fields. When Ronnie asked Padillo where the truck was, Padillo responded that the crew was not working.⁴¹ Guillen recalls seeing other workers' cars at the camp that were normally left when the Company truck was taken. He again asked Padillo and got the same response.

On July 29, he went to the labor camp at 5:30 a.m. He again observed workers' cars, but no Company truck.

On Monday, August 1, Guillen went to Lerdo and talked with Padillo about getting work in another one of Piano's crews. Guillen and another applicant were told to wait while Padillo talked to John Murray. Both applicants

⁴¹Padillo denied this remark. He testified that he remembers Ronnie Guillen's sister, but he does not remember Ronnie asking for work in 1977. Given the fact that Ronnie was hired by Padillo, I credit Guillen's version of the July 28 conversation.

apparently waited all day without success. Guillen did not return to the fields again.

General Counsel contends that the above course of conduct amounted to a discriminatory discharge. I disagree. No evidence was presented to show that Guillen actively supported the Union other than the one seemingly pro-Union remark he made to Andy Munoz. An inference that the innocuous remark was then communicated to Padillo cannot be drawn from this evidence. The fact that Padillo may have misinformed Guillen about the crew's work that day cannot be interpreted as an attempt by Padillo to rid the crew of a Union supporter. From April to July 26, Guillen never had discussed the Union with Padillo and had done so only briefly with Andy Munoz on July 26. Guillen never attempted to return to Munoz' crew on his own or to contact Munoz in some other way.

General Counsel has not sustained his burden of proof. I therefore dismiss Section 6(e) of the Complaint.

0. SECTION 6(f) -- 56

Rogelia Medina, a packer, began working for Respondent with her family in 1975. A group of Medina family members also worked in 1976. In 1977, Rogelia packed while her husband, Ricardo, mother-in-law, Obdulla, and sister-in-law, Obdulla M., picked grapes. Rogelia, Ricardo and Obdulla began in May, and they were joined by

Obdulla M. in July.

While the group worked in the fields, they talked to UFW organizers who visited the crew. Rogelia recalls supervisors Piano Padillo and John Murray passing within 10 feet of their group while the Medinas talked to organizers. Beginning in July, the group attended four UFW meetings in Delano, where they obtained Union buttons. Rogelia testified that she then wore a button to work on a daily basis while the other three wore them on occasion.

Rogelia took a radio to work each day. She would pack at the end of a row listening to station KXEM, which featured a UFW program each Wednesday morning. She played it loudly enough for the other workers to hear. She testified that it was a common practice for packers to bring radios. She recalls times when Padillo passed her while the Union program was on the air.

On Wednesday, August 1, Rogelia twisted her left side while packing. She informed the foreman and received papers to take to a doctor on Thursday. Before work on Thursday, Rogelia, wearing a UFW button, accompanied her family members to work, Leticia Carrillo, second foreperson in the crew, and foreman Padillo informed them that Ricardo, Obdulla and Obdulla M, could not work without a packer.

After consulting with the UFW, Rogelia, Ricardo, Obdulla M. and two Medina brothers returned to Piano's

labor camp at 4:30 that afternoon. Rogelia, still unable to work herself, talked with Leticia and asked her for work for the other family pickers. Leticia informed her that she thought she could place them because there had been two extra packers available that morning.⁴² Leticia told them to talk to Piano. When Leticia informed Piano of the extra packers, he told them to come to the fields the next morning.

Leticia testified that the extra packer she mentioned was Antonio Zermano, who had been working with Ruben Espinosa and Marella Carrillo (Leticia's sister). Leticia explained that these workers had not been working together for very long. ". . . [S]ometimes he [Antonio] would miss and then we have to put my sister in my mother's crew if there was a chance, or put him in another crew."

Ricardo Medina, his sister and mother arrived at

⁴²Leticia's remarks concerning the two extra packers were received in evidence as an authorized admission of foreman Padillo pursuant to Section 1222 of the California Evidence Code. As to her authority to make such a statement for Padillo, packer Pedro Vera testified that it was Leticia's job to keep track of the workers that reported each day. However, no other evidence was offered to show that she had more authority than any other second foreman-son in a Guimarra crew. Leticia testified that she made the remark, but claimed that she only mentioned one additional packer. Crediting Rogelia's version of the conversation, the remark by Leticia will be accepted for a non-hearsay purpose, explaining subsequent inquiries made by the Medinas, and not for the truth of the matter asserted. I therefore correct the ruling I made at, the hearing, receiving the remark as non-hearsay rather than an exception to the hearsay rule.

work before 6:00 a.m. the next day. They spoke with Piano, Leticia and Bill Ince and were told that there were no packers. Ricardo asked Piano to show him how to pack. Piano told him that he did not have time. The group was told to return when Rogelia was again well enough to pack.

On August 13, the group, including Rogelia, returned and were put back to Work in Piano's crew.

General Counsel contends that this group of pickers was discriminated against because they did not get the same treatment afforded Leticia Carrillo's sister. In support of this contention, General Counsel offers Pedro Vera's testimony. Vera testified that Piano had a policy of distributing pickers among packers or teaching a picker how to pack. Vera claims that anywhere from 3-5 pickers worked with one packer. Padillo admitted that he sometimes trains a good picker to pack, but the process is very time-consuming.⁴³

Although Padillo on occasion would place pickers with other packers, his failure to do so with the Medina group does not appear to have been discriminatorily motivated. Further, as Rogelia admits, most packers play their radios loudly. From the testimony of many witnesses, the familiar UFW song apparently carries across many vines on

⁴³Padillo estimated that the initial instruction took 1/2 - 1 hour with constant checking. Padillo stated that it often took him 1 year to discover whether a person was capable of packing.

Wednesday mornings. Other than wearing a Union button (Rogelia each day, the others occasionally), this group did not distinguish itself as Union supporters. Furthermore, when they returned on August 13 (1-1/2 months before the election) they were immediately put back to work without any question. In all, they missed 6 days of work while Rogelia was recuperating.

Under these circumstances, General Counsel has failed to sustain his burden of proof. Therefore Section 6{f) of the complaint is hereby dismissed.

P. SECTION 6(g) - 63

Manuel Gonzales worked as a field packer for Respondent in Tino Espinosa's crew in 1968, and then he worked for Santana Soto from 1969-1972. Manuel served as Union Steward in Soto's crew during the first two years of the UFW contract. In that capacity, he participated in the adjustment of employer-employee problems, he checked dispatchers and advised workers of meetings. Gonzales testified that he saw Sal Guimarra on a daily basis during his days as union steward.⁴⁴

⁴⁴Sal Guimarra testified that he did not remember Manuel Gonzales. Based on other inconsistencies in Sal Guimarra's testimony, his total downplaying of the UFW campaign, and his cavalier attitude throughout, I do not believe that Sal did not remember Gonzales. However, I found Manuel Gonzales not to be a particularly believable witness. His general demeanor, which included avoidance of eye contact with me and the attorneys, was not one of a person telling the truth.

Manuel Gonzales testified that during his tenure as crew steward, Sal once told him that his packed box was not right and he could be fired regardless of the union.

Maria Gonzales worked for Manuel Navarro's crew during the picking season from 1974-1977. She was neither reprimanded nor laid-off in 1974, 1975, or 1976. During those years, she worked without her husband. Maria Gonzales recalls filing a declaration with the Union against Sal Guimarra during the 1975 election.

In 1975, Maria Gonzales got her husband a job in Navarre's crew during the grape harvest (September and October). Navarro testified that he gave Manuel Gonzales the job because Navarro owed Maria a favor for her good work. Navarro recalls that Manuel Gonzales did a "quality job" in 1975.

Maria Bravo Castillo, a picker and third member of the #15-Gonzales group, worked steadily for Respondent for five years. Prior to her 1977 lay-off, she never had been laid-off. She presently is an employee of Guimarra.

In 1977, Maria and Manuel Gonzales applied for work with Manuel Navarro prior to the harvest. They began work on July 9. In essence, both Manuel and Maria testified that their work went unscrutinized until they were fired approximately 10 days after the beginning of the harvest.

However this testimony was contradicted by their co-worker, Maria Bravo Castillo. She testified that Navarro

talked to their group almost immediately after picking began. He instructed them on what was wrong with the grapes. The group corrections continued at a rate of 2-3 times a day. From the outset, Maria Bravo asked Navarro to transfer her to another group because Manuel Gonzales continually rushed her to pick more grapes. The witness testified that during the 8 days she picked with Group #15, Navarro complained 16-24 times, opening bunches of rotten grapes and having them re-clean some of the bunches.

On their final day of work, Sal came to inspect work late in the afternoon. According to Manuel Gonzales, Sal stood close to them, watched them work, and talked to the foreman about if 15 before leaving. Navarro later approached the group, and according to his own testimony, said "That's it. That's it."⁴⁵

Maria Bravo Castillo testified that Navarro sent her home for two days until the Thompson Seedless harvest began. She did not hear Navarro talking to the others in the group. When Ms. Castillo asked Navarro for an explanation, he said he did not know, suggesting she ask the supervisor. She then apparently spoke to supervisor Claude Norman who told her she would be laid-off for two days until the new grapes started. Ms. Castillo also talked to Sal Guimarra the

⁴⁵Navarro further testified, "I gave up. I gave up. I swear to God's name. I swear to God I gave up. I said I tried as hard as I could, but I didn't want to talk anymore. I didn't want to get nasty. All I said was, 'That's it.'"

next day. Sal told her that her number was wrong and that she should return when the Thompsons started.

Group #15 last worked on July 18. On July 21, Manuel and Maria Gonzales went to Manuel Navarro's home. According to Maria Navarro, who was alone at home, they asked for their checks.⁴⁶ She gave them checks for the previous week's work. She told them to return the following week for Monday's check, claiming she did not have a current check because they had not been fired, Manuel Gonzales testified that Mrs. Navarro said we could get checks the following week because there was a chance we would return to work.

Manuel Gonzales testified that he was subsequently advised by an ALRB agent to re-apply for work, after assurances were made to the ALRB agent by a Company attorney that the Gonzales had not been fired. Manuel Gonzales with a friend, Alberto Blanco, went to see Manuel Navarro at his home. Navarro told him that Gonzales would be re-hired when the crew moved to Ducor. Navarro asked him for his telephone number, telling him that he would call the following week. Gonzales asked Navarro whether Maria Bravo

⁴⁶Maria Navarro further testified that they asked for their checks because they were not returning. She testified that they also stated that they were working elsewhere. I conditionally accepted these remarks, subject to later striking, based on Respondent's representation that the remarks attributed to Manuel Gonzales were inconsistent with his prior testimony. After examining Manuel Gonzales' prior testimony, I nowhere find prior inconsistencies. Therefore, I strike her above testimony as related in this footnote.

Castillo was working. Navarro said she was.

When Gonzales received no telephone call, he returned to Navarro's home the following week with a friend, Irman Ramos. Navarro said there was no work, telling Gonzales that he intended to release other people so the job would last longer.

General Counsel contends that Company records (GCX 58,59) demonstrate that when the crew moved to Ducor on August 19, Navarro hired two workers with no prior 1977 earnings with the Company, establishing that the Gonzales were discriminatorily excluded.

However, General Counsel's contention is not substantiated by the record evidence taken as a whole. Manuel Navarro recalls talking to the entire group if 15 two or three times daily. Navarro specifically recalls talking to Manuel Gonzales frequently because he was the "captain of the team" and was responsible to make sure the grapes were decent. Navarro also remembers talking to supervisor Claude Norman and Sal Guimarra about #15's poor work.⁴⁷ Navarro did not speak to Guimarra after Sal left the fields on July 18. In fact, Navarro testified that the decision to send them home was his own, not having received an order from Sal. After sending them home, Navarro's wife informed him that Manuel

⁴⁷Navarro testified that he called numerous problems to the attention of all three members of the group. He showed them how to open bunches and eliminate waterberries.

Gonzales wanted his money. Navarro's response was that the Gonzales had been laid-off, thus not qualifying them to collect termination checks.

Manuel Navarro testified that the normal procedure used by the Company when an employee quit or was fired was to get him/her a check usually within two hours. The regular Company checks were prepared by computer, but another type of handwritten check was used for employees who were fired or quit.

Contrary to the testimony offered by Maria and Manuel Gonzales, the Navarros and Maria Bravo Castillo testified about numerous occasions when Group #15's work was unsatisfactory.⁴⁸ Maria Navarro, who kept records for her husband's crew, testified that Group #15 was packing almost twice as many boxes as the average group (RX 8}. Maria Bravo corroborated this fact in claiming that Manuel Gonzales continually rushed her. Gonzales explained that his son helped increase their production, and he was not paid. However, Manuel Navarro testified that he did not allow the Gonzales boy to pick. The boy's work included carrying boxes out from the vines, and it lasted only three days.

The record indicates that Manuel Navarro gave the workers in Group #15 a confused message on the day of the

⁴⁸I credit these versions of the events, including the fact that Group #15 was criticized 2-3 times daily.

the lay-off. Maria Bravo Castillo was confused and asked Navarro for an explanation. Navarro told her to talk to supervisor Norman. She actually got the clarification from Norman as to the two day lay-off. Mr. and Mrs. Gonzales apparently asked no other Company supervisor for an explanation. Admittedly, Manuel Gonzales never talked to Sal about his job as he originally told Navarro he intended. However, Gonzales testified that he learned that Maria Bravo was working again, having talked to Sal.

Furthermore, Gonzales was particularly evasive about whether he was working at the time he returned to the Navarro's house to receive his final check. He recalls getting a job at Zaninovich, but he was uncertain whether it began in July or the last days of August.

Although General Counsel points out that individuals with no prior 1977 earnings were hired the week ending August 19 in Ducor, he has failed to sustain his burden of showing that the Gonzales were discriminated against because of their support for the Union. Manuel Gonzales' previous work experience with Navarro in 1975 was a positive one. The quality of his work changed in 1977. Gonzales' previous job as Union steward apparently did not preclude his working with Navarro's crew through the election campaign of 1975. Gonzales' union contacts with Sal Guimarra precede that date by three years.

The evidence reveals that Manuel Navarro most probably was not anxious to have Manuel Gonzales in his crew because

his work was not satisfactory. However, their layoff and subsequent and of employment with Respondent cannot be logically connected with Maria and Manual Gonzales' Union activities. I therefore dismiss Section 6(g) of the Complaint.

Q. SECTION 6(h) - 80

Ramona Vela worked at Respondent in 1965, 1970 and 1977. Her husband, Frank Candia, joined her in 1977, and they began working on April 9 with Tony Miyagishima's crew. Ramona had been a member of the UFW since 1967, and Frank had joined in 1973 or 1974.

After their first month of work, Ramona began complaining to Tony and others about "dirty toilets." She also complained about bad drinking water and the distance the workers had to carry their boxes to the weighing tables. Ramona recalls telling Tony and others that if Chavez came in, there would not be these problems. Ramona stated that her group often was scolded after that point in time, and life became impossible.

Frank also testified that he objected to working in Tony's crew because "they didn't help the worker make the work easier," Frank recalls one day raising an arm and loudly shouting, "Up with Chavez," while Tony was approximately 100 feet away. Frank also testified that one day while he observed Tony criticize other workers who were

8 feet away from him, Frank called out, "Long live the Union."

Frank further testified that he had been sent home by Sal Guimarra on two occasions. The first incident involved meeting Sal when Frank was getting a drink of water. Apparently Sal believed that Frank should have been working because Sal sent him home. On the second occasion, Frank had stacked 2-3 picked boxes of grapes in order to cut down on his number of trips to the weighing table. Sal, disapproving of the practice, got angry and said "Home."

Justino Padilla, the third worker in the Vela-Candia group, was sent home once on the day the crew worked on the chemical spray problem.⁴⁹

During their 1977 employment, Ramona, who was pregnant, began having physical problems in June. While the crew was tipping and cleaning grapes, her doctor ordered her not to work for two weeks. Ramona telephoned Tony to inform him. Tony told her to return when she was ready to resume work. During the week of June 12, she worked only three days. On Friday, June 16, she and Frank returned in the morning prior to work to receive schooling and inform Tony that she had a hospital appointment that day.

⁴⁹Justino Padilla did not testify, and little evidence was offered as to his employment with Tony's crew. However, based on my subsequent findings and conclusions, I find it unnecessary to further discuss Mr. Padilla's employment or his subsequent departure from the crew.

June 16 was the day that Sal Guimarra gave special instruction to Tony's crew and three other crews because of the 100-acre scarred grape problem. Black scars caused by a concentrated insecticide blemished one side of the grape vines. The instruction went badly, and Sal was forced to give another demonstration after lunch. On June 16, Sal left a message for Tony at the office, ordering him not to allow employees to work the next day if they had not been there on June 16. Sal reiterated that message to his foremen at noon on Friday, after trying to solve the spray problem.

Ramona and Frank were present for the schooling, but because of the medical apointment, they were gone for the rest of the day. When they arrived at work the next day, Tony informed them that they could not work because they had missed Sal's instruction. They protested, having attended the previous day's schooling. However, Tony told them that those were Sal's orders. Ramona testified that on Monday, June 19, she told Tony, supervisor Russ Carlson and Sal that she was going to the Union. She then went to the Union.

On August 9, Frank and Ramona arrived at work 15 minutes late according to Ramona's testimony. They had missed work during the preceding 1-2 days, and their picking boxes were not in the field.⁵⁰ Tony told them to look

⁵⁰Supervisor Russell Carlson testified that sometimes pickers run out of picking boxes or cannot locate

for some boxes. Frank located one, which Ramona and Justino Padilla filled. Tony angrily told them to pick in the packing boxes. Then, according to Ramona's testimony, Tony, angered over their use of packing boxes, instructed crew helper Jose Rios not to give them any more work. At that point on August 9, Ramona and Frank claim that Tony fired them.

Respondent witnesses gave contradictory testimony about the events leading up to the group leaving the crew on August 9. Tony testified that during her pregnancy, Ramona was absent from work for short and long periods of time of up to 2-3 weeks. Because of her advanced pregnancy (she gave birth on August 30), she had difficulty packing, and it was necessary for Tony to break in Frank as a packer. Tony claims then to have had problems with Ramona's picking. He often corrected her on holding the bunch properly. He also criticized Frank's packing because he was not leveling the bunches. Tony testified that both Ramona and Frank got very angry at him. Tony further stated that Ramona was particularly upset when Tony did not allow them to work on the chemically sprayed grapes on June 16.

Tony contends that he did not fire them on August 9.

them in the morning. As supervisor, he watches for this problem and replenishes the supply when necessary. Carl-son testified that during times when picking boxes are missing, pickers customarily pick using packing boxes. The Company apparently condones this practice.

Tony had problems that day getting people into the right rows. The picking boxes were mixed up, and the supervisor had just moved more boxes into the field. Usually each picker has two boxes that he/she leaves in the field overnight. On that morning, Frank and Ramona arrived late, and Tony asked them what they were doing. He busily passed them, and then he returned. Frank asked him for a picking box. Tony said that he did not answer him because he was occupied lining up the other workers. Tony instructed his helper Jose Rios to let them take a row. Tony later spoke to Frank. Frank had cursed him and told him he was going to leave the bunches on the ground. Tony told him not to leave the bunches, and Frank again cursed him. The men argued briefly. Tony told Jose Rios to look for a picking box and instructed Rios to have Frank and Ramona use packing boxes.

Jose Rios saw Frank and Ramona arrive and eventually take a row. Rios testified that he did not speak to them that morning.

Tony denied hearing Frank shout Union slogans at any time. Also, he recalls complaints about the weighing tables, but he does not remember whether Ramona specifically complained about working conditions.

General Counsel has failed to sustain his burden of proof. The alleged activities (Ramona's involvement in concerted activities and Frank's deliverance of two

pro-Union statements, one from a distance of 100 feet from Tony) are in no way connected to these workers' leaving the Company's employ. Furthermore, I credit Tony's testimony and Jose Rios' testimony that no statement of "no more work for them" was made. Frank and Ramona found the picking and packing more difficult because of Ramona's advanced pregnancy. Tony allowed her to miss long stretches of work. Furthermore, the chemical spray problem sidelined other workers as well. No discriminatory pattern can be inferred from Tony's conduct following Sal's general orders of June 16.

The evidence, taken as a whole, indicates that Ramona Vela and Frank Candia quit Respondent on August 9. I therefore dismiss Section 6(h) of the Complaint.

R. SECTION 6(i) - 60

Jose Gamboa worked for Respondent in 1950, 1973, 1976 and 1977. In 1973, he did not work during the strike.

Gamboa, a member of the UFW since 1963, worked for Jose Liceaga's crew in 1976 and 1977. Liceaga testified that he and his brother Felix had known Gamboa "pretty well" for 20 years. In 1976, Gamboa had a dispute with Jose Liceaga over wages. Felix told Gamboa that there was nothing they could do and suggested that Gamboa talk to supervisor

⁵¹See discussion in 5(c).

Roy Koenig. When Koenig angrily responded that the pay was good, Gamboa led a group of workers out of the field in protest.

During 1976, Gamboa testified that he was the only crew member wearing a UFW button. When he reapplied for work in March 1977, Jose Liceaga joked with Gamboa about the wage dispute in 1976. After being hired in March, Gamboa worked regularly. In May, Gamboa learned of the upcoming Union election. UFW organizer Lalo Saldana asked him to help organize the crew by talking to workers and passing out leaflets. On 3 or 4 occasions when he distributed Union literature, he would first give a copy of the handout to Felix Liceaga. On those occasions, Gamboa observed Felix showing the leaflet to Jose Liceaga as the two men moved away from the crew and talked. Gamboa also recalls Felix showing Union literature to supervisor Don Moody.

During the 1977 Union campaign, Gamboa frequently talked to workers about Union benefits. He also regularly wore a UFW button and placed a Union bumper sticker on his car one month after he began work. In June, Gamboa recalls telling Jose Liceaga that the workers soon would have a Union. Liceaga responded that they already had the Teamsters. When Gamboa told him that the Teamsters were no good and that he was referring to Chaves' union, Liceaga replied that the UFW was no good.

On July 10, Gamboa took an extended vacation in Mexico. When he left, he asked Jose Liceaga, "When I come back will I have work?" Liceaga responded, "If there is any work."

Gamboa returned from Mexico and contacted Jose Liceaga on or about August 20. Gamboa went to Liceaga's house on three successive Saturdays. During the first two visits, Liceaga told him there was no work. During a third and final visit, Liceaga told him that Roy Koenig did not want any more people. Gamboa also telephoned Liceaga on three occasions, but he did not find Jose at home.

Liceaga contends that Gamboa contacted him only once, and he told Gamboa to call again. Liceaga claims that he never again heard from Gamboa.

During the week after Gamboa's reapplication for work, Liceaga hired 2 new crew members (Francisco Medina and Fernando Liceaga). Jose Liceaga testified that Medina previously had worked in the crew, and that his nephew Fernando merely filled in for people who were absent. However, Jose Liceaga stated that if someone needed work, Liceaga would hire him if there was work available. He also testified that he could not remember how long the Roy Koenig order not to hire was in effect. Jose admitted hiring his nephew Fernando after Koenig's order not to hire.

Liceaga's explanation for not hiring Gamboa was that Gamboa did not call again and that Jose did not know

how to contact him. That explanation is particularly weak considering Liceaga's admission that he and his brother Felix knew Gamboa pretty well for 20 years. Furthermore, with that background in mind, Liceaga's statement that he did not know whether Gamboa supported the UFW further chips away at Liceaga's credibility. Additionally, in acknowledging the credited conversation related by Gamboa between Liceaga and Gamboa regarding the UFW and Teamsters and the fact of Gamboa's active support in 1977, I find that Liceaga knew that Gamboa was an active Union supporter.

With this knowledge of Gamboa's support of the UFW, and the fact that Liceaga could have hired him into the crew in late August, I infer a discriminatory motive in his not hiring him. That finding is bolstered by Gamboa's credited statement that Liceaga said the UFW was no good.

I therefore find that Respondent on August 20 refused to rehire Jose Gamboa in violation of Sections 1153(a) and (c) of the Act.

S. SECTION 6(j) - 74

Fidel Martinez worked at Respondent in 1977 in Celso Domingo's crew. He began picking grapes in mid-July. Because Domingo spoke no Spanish, his helper, Francisco "Pancho" Chavez, often gave schooling in the morning and directed the workers.⁵² Martinez recalls Chavez, in the

⁵² Fidel Martinez testified that Chavez told people

presence of foreman Domingo, telling the crew in August that he had authority to "fire" people. Domingo concurred saying, "True, true, that's true."

On August 23, in the presence of Chavez, Fidel asked the weigher, Manuel, when the crew was quitting. Pancho told him to figure it out.

On August 24 at 6:20 a.m., Pancho Chavez conducted the schooling. The crew was paid for hourly work beginning at 6:30 a.m. Near completion of instruction, Pancho said he did not want anyone to complain about the time. Martinez asked him whether the workers would be paid for the 10 minutes of schooling. Chavez told him that only he was working by giving the schooling. Pancho said the workers were only listening. Martinez told him not to get angry, adding that he was going to the Union after work as he didn't feel it was right. Chavez responded that Martinez could go anywhere he pleased and did not have to come back to work tomorrow. Pancho then told Fidel that starting today there was no more work. Fidel asked him whether he was firing him. In foreman Domingo's presence, Pancho said that he was.

Several witnesses testified about this incident. Martinez' version was corroborated in essence by crew workers Jose Cardena, Richard Silva, Ubilia Martinez

how to pick and directed them in starting and stooping work.

⁵³Domingo testified that Fidel Martinez spoke very good English and was a model worker.

(Fidel's wife), Lydia Jimenez and Oralia Cardena (Fidel's sister-in-law). Witnesses Jose Cardenas and Ubilia Martinez corroborated Martinez' testimony regarding Chavez' statement, made in Domingo's presence, that he (Pancho) had authority to fire people. Domingo testified that Chavez had no such authority and also that he never heard Chavez tell workers that he did.

Pancho Chavez testified that Martinez told him that if he were not paid for the 10 minutes, he was going to file a complaint. Pancho responded that he could do as he chose. Fidel then asked him whether he was running him off. According to Chavez' testimony, Pancho told him he had no right to fire workers, but Fidel could leave if he wanted. Chavez' version was corroborated by his wife, Lilia Chavez, and crew worker Nancy Rodriguez.⁵⁴

I find Martinez' version of -the events far more convincing, and I credit his testimony and those witnesses who corroborated it. Martinez testified with far greater conviction, while Chavez carefully seemed to couch his testimony in terms appropriate for one who had no real authority to fire employees. In essence, Martinez was a more believable witness. I further credit Martinez'

⁵⁴Two additional witnesses added little. General Counsel witness Juan Tomeyo was confused whether Chavez fired him before or after Martinez said he was going to the Union. Respondent witness Esperanza Aragon remembered little other than Pancho's denial as to firing Martinez.

statement that Chavez represented to him and other workers that Pancho could fire employees. I also find that the statement was ratified by foreman Domingo.

Chavez operated as a second foreman or helper in much the same way as other helpers at Guimarra. Although Chavez possessed no actual supervisory authority, he was the Spanish-speaking communications link for foreman Domingo. Most important, in the presence of Domingo, Chavez told employees that he could "fire" them. Domingo agreed with Chavez, telling the employees it was "true." This statement by Domingo established Chavez' authority to fire employees. In fact, Chavez proceeded to fire employee Martinez.

"In some circumstances an employer may be liable for the actions of rank-and-file employees because of a failure to timely repudiate or disavow those actions; that is, under a theory of ratification." Ernest J. Homen, et al., 4 ALRB No. 27 (1978) . "By remaining silent and failing to disavow acts constituting unfair labor practices or by neglecting to reprimand the employees who committed them, employers have been deemed to have acquiesced in, condoned or approved of such conduct and have been held responsible for the unfair labor practices committed. Venus Ranches, 3 ALRB No. 55 (1977); citing NLRB v. American Thread Co., 28 LRRM 1249 (1951), enf'd. 204 F2d 169(1953); Brewton Fashions, Inc. 34 LRRM 1329 (1963), enf'd. 62 LRRM 2169

(C.A.5. 1964).

The credited testimony of General Counsel's witnesses from the crew placed foreman Domingo at the scene of the incident condoning Chavez' action. Because Chavez gave the schooling and most directions for non-Spanish speaking Domingo, he appeared to employees to have apparent supervisory authority. See R&M Electric Supply Co., 200 NLRB 603, 608 (1972). Respondent is responsible for Chavez' conduct because it placed him in a strategic position where employees could reasonably believe he spoke on its behalf. See Mississippi Products, Inc., 103 NLRB 1388, 1393 enf'd. 213 F.2d 670 (C.A. 5, 1954).

I further find that Chavez decided to fire Martinez after the latter declared, in the presence of the rest of the crew, that he intended to go to the Union to inquire whether employees could be schooled without pay. When challenged by Union adherent Martinez, Chavez chose to exercise his authority by telling Martinez that he was fired. Chavez' acts naturally would tend to discourage employees from taking grievances to the Union. I find that such conduct violates Section 1153(a) and (c) of the Act.

T. SECTIONS 6(k), 11(1) -- 31,53

Ramon Ramirez⁵⁵ began working for Respondent in

⁵⁵Ramon Ramirez 6(k) and Ramon Ramirez 6 (m) are two different people.

Valeriano Juarez' crew in August 1975. In 1977, Ramon and his family (Felipa, his wife, Sergio and Ignacio, his sons, and Nicolas Ramirez Barron, his nephew) joined that crew in May or June. Up until mid-September, the Ramirez family had friendly relations with Valeriano and his family. On occasion, they visited each other socially in their respective homes.

On September 11, UFW organizer Juan Espinosa held a Union organizational meeting for the Juarez crew members. Ramon attended the meeting. On or about September 13, Ramon and his family began passing out Union buttons, leaflets and signs. They did so on a regular basis before work and at lunch, speaking to workers about the Union. The Ramirez boys put a Union bumper sticker on the family car, and the entire family wore Union buttons.

Shortly after the family's organizational activities began, someone apparently scratched their bumper sticker with a knife. Angered by this action, Ramon told a fellow worker that if he found out who had done it, he would take him to court. Shortly thereafter, Valeriano's wife asked him who had destroyed the bumper sticker. Ramon said that he did not know.

At the end of that work day, Ramon put another bumper sticker on his car. Valeriano approached him and asked Ramon "What the hell the sticker had to do with him." When Ramon responded nothing, Juarez asked him whether he planned

to take him to court. Ramon said he made that statement about the individual who scratched his bumper sticker. Valeriano claimed that worker Pimental accused Valeriano of marking the bumper sticker. Although Ramon denied that, Juarez continued, "I don't care that you have those stickers of Chavez. You don't scare me. I don't care if you have that son of a bitch hanging on you. It's not my grave you're digging. It is yours."

Later that week, the crew discussed the current piece rate for deleafing with Valeriano. When Juarez stated the rate at \$25 a ton, Ramon asked for a breakdown. Valeriano told him to ask a supervisor. When Ramon protested that he did not speak English, Valeriano told him to go to the Union to find out. Ramon told him they were not discussing the Union. Valeriano then told him that he argued too much and that "ever since that son of a bitch Chavez had come in, that job was not done by the hour. The favor was owed to Chavez."

On a later day, when finishing work, Ramon got permission from Valeriano to fix a flat tire. While Ramon's car was on a jack, Valeriano attempted to drive his pick-up truck between Ramon's car and another. The clearance wasn't adequate, and Valeriano scratched Ramon's car. Valeriano reminded Ramon that the latter had no insurance and that he was an "illegal." Valeriano told Ramon to get an estimate and bring the bill to him.

The following day the Ramirez group was picking in the cans. Ramons's son Sergio went to empty some cans into the truck. Within hearing range of the Ramirez family, Valeriano, talking to another employee, referred to them as "Chavista chingados."⁵⁶ When Ramon took cans to the truck, he asked Valeriano why he had called them "chingados." Valeriano denied it, asking Ramon since when had he been a Chavista, considering the fact that he was an "illegal." Valeriano reiterated that it was their own graves.

On September 26, the day of the election, Ramon served as an election observer. Because new crew members had no cans, Ramon's family waited 1/2 to 1 hour before starting work. Although Valeriano testified that other workers had extra buckets, he claimed that it did not occur to him to have the Ramirez family use buckets of other workers. That same day Union organizers and ALRB agents visited the crew. The ALRB agent told workers that illegal aliens could vote in the election. Ramon testified that Alfred Guimarra arrived and told the ALRB agent he had one minute to leave. Ramon told the agent that Valeriano said illegals could not vote. Mrs. Juarez called him a liar.

Ramirez and his family worked the day after the

⁵⁶Translated as sons-of-bitches, mother-fuckers, or sons of fucked-up mothers.

election. Ramon testified that "pressure was being placed on us," and they returned for one day "only so that it would not be said that I--that the reason for not being there was because we were afraid."

Respondent contends that the Ramirez family quit the crew the day following the election rather than being constructively discharged, the position advanced by General Counsel. In addition, Respondent contends that the incident involving the sideswiping of Ramirez' car (11(1)) was accidental and not an unfair labor practice.

Initially, I will turn my attention to the auto incident. From examining the testimony of both Ramon Ramirez and Valeriano Juarez, I am unable to make a connection between this incident and Ramirez' union activities. At most, Valeriano reminded Ramirez that he had no insurance because he was an illegal alien. However, Juarez volunteered to take responsibility, telling Ramirez to get an estimate and that Juarez would pay for the repair. The only conclusion that can be reached from the evidence was that it was an unfortunate accident and was in no way connected to Ramirez' Union activities. I therefore dismiss Section 11(1) of the complaint.

However, I reach a different conclusion regarding the constructive discharge.⁵⁷ Ramirez and Juarez enjoyed a very

⁵⁷Ramirez was a far more believable witness than Valeriano Juarez. Juarez responded flippantly to many

friendly relationship prior to Ramon's organizational activities. Juarez' treatment of the entire family began to change in mid-September when the Ramirez family started passing out leaflets and buttons and talking to workers about the Union. Open hostility in the crew towards the Union became evident when the Union bumper sticker on Ramon's car was scratched with a knife. Although Ramirez never accused Juarez of the act, Valeriano denied it and defended himself, pointing out that Ramirez was digging his own grave with his Union activities.

During a discussion with the crew about piece rate, Juarez blamed Cesar Chavez for initiating the policy. As Juarez pointed out later in his testimony, the crew was averaging \$4.25, which was more than the hourly rate. Also, he failed to tell the workers that the Company had a policy of making the piece-rate at least equivalent to the going hourly rate.

Although I find the sideswiping of Ramon's car accidental, Juarez took that opportunity to remind Ramon that he was illegal, asking him how that fit with his being a "Chavista." And finally, Juarez referred to the Ramirez family as "Chavista chingados," mentioning again that they were digging their own graves.

With a certain amount of pride, Ramon and his family

questions. I therefore credit Ramirez' version of the events. I also find that the testimony of witness Rutilo Ybarre provided little insight into the "chingado" incident.

returned the day after the Union lost the election. As Ramon stated, they returned "so that it would not be said . . . the reason for not being there was because we were afraid."

The Ramirez family worked for two weeks after their organizational efforts began. Valeriano Juarez became abusive almost immediately. He reminded Ramon twice that they were "digging their own graves" by supporting Chavez. The clear implication from these remarks was that there would be reprisals if the Union lost the election. Further, Juarez heaped degrading insults on them in the presence of other workers. Clearly, the Ramirez family could not be expected to continue working in that hostile environment. I find that these events constitute a constructive discharge of the Ramirez family in violation of Section 1153(a) and (c) of the Act.

U. SECTIONS 6(1)(m)(n) 11(h)(j)(k) -- 48,68,55,32,65,37

Enio Pineda Ramirez (herein Enio Pineda), Ramon Ramirez, Florentine Andaya, Roberto Ruiz, Arturo Montes, Emeterio Rodriguez and Juan Zapata Rios worked in Tino Espinosa's crew in 1977. According to all of the witnesses' testimony, these workers experienced no difficulty with working conditions until September.⁵⁸ On September 9,

⁵⁸According to Tino Espinosa's testimony, some weeks before the group left the crew, Enio Pineda was very noisy

Emiterio Rodriguez and Juan Zapata Rios were picked up by the Immigration Service.

In September, Andaya, Pineda, Ruiz, Montez and Ramirez signed Union authorization cards. On or about September 14, all of the above alleged discriminatees attended a UFW organizational meeting at 40 Acres in Delano. Emiterio and Juan Zapata apparently had been returned to the Bakersfield area by the Immigration Service that same day. Following the meeting, all of these employees engaged in organizational activities on behalf of the UFW, which included wearing buttons, passing out literature and talking to workers. Ramon Ramirez recalls Tino Espinosa asking him what the Delano meeting had been about and how many workers attended. Tino told him that he expected it from the other workers, but not from Ramirez.

The day after the Delano meeting, Enio Pineda testified that he got behind in his work, and Tino told him that he was "lazy" and was the "least" in the crew. Ramon Ramirez testified that Tino told workers not to sign authorization cards, intimating that there would be no work. Pineda recalls both before and after the Delano meeting being warned by Tino not to sign a card. Tino told him that he could lose his job and not have money to pay the "Coyote"

at 2:00 a.m. at the labor camp. Espinosa was forced to speak with him because of the disturbance. Espinosa recalls another incident where Pineda's car crushed a fence post at the camp. The post subsequently had been repaired by Pineda and the others.

when Pineda returned to Mexico.

Both Pineda and Robert Ruiz testified that they enjoyed a good relationship with Tino prior to the Delano meeting. Pineda stated that after the meeting Tino insisted that they weigh all their crazy boxes, unlike the usual arrangement of weighing occasional boxes. Also Ruiz and Pineda testified that carts used to take boxes out of the fields became unavailable to this group of employees.

After the Delano meeting, Ruiz testified that Tino refused to feed their group any longer at the labor camp. Ruiz, Andaya, Montes, Pineda and Emitteric Rodriguez moved to a motel that week.

During the week following the Delano meeting, Ramon Ramirez went with friends to the garage or home of Maclavio Espinosa, Tino's cousin and second foreman in his crew. Because Ramirez was wearing a UFW button, Maclavio told him that "Chavistas" were not wanted, telling him to leave. Ramirez testified that Maclavio told him, "you leave or you're going to get beat up." Ramirez quickly left.

After their release by the Immigration Service, Emitterio Rodriguez and Juan Zapata Rios attempted to rejoin the crew on September 17. Upon entering the fields, Tino stopped them, telling them, "We'll talk to the man (Dave Stanley) and see if he'll give you more work." Tino sent them to see Stanley, who refused them work. Stanley testified that he did not recognize them as current workers.

Crew worker Felipe Garcia testified that Stanley asked Tino who the two men were that the Union took out of Immigration. When Stanley was informed, he told Emitterio and Juan Zapata that there was no work. Stanley testified that Tino informed him of their identities later that day.

On Saturday, September 17, Enio, driving his Buick Riviera, sped in towards the labor camp on a dirt road leading from the main highway. There was a soccer game in progress in the immediate area outside the camp entrance. Camp resident Louisa Garcia testified that her child was playing on his tricycle in front of the camp. When Pineda entered the area, leaving a cloud of dust, Tino Espinosa went up to his car, telling him he was going too fast. Tino mentioned to Pineda that he had hit and broken a fence post in the past. Both men had been drinking beer prior to this confrontation. Pineda told Espinosa that he was not boss outside the camp. Tino's son Gilbert and his daughter were nearby at the time. Pineda and Espinosa argued. According to employee Felipe Garcia, Tino's son Gilbert then punched Pineda, and a fight ensued. Garcia stated that Gilbert also hit Pineda's car with a stick and used the same stick on Florentine Andaya, who had also arrived with Pineda. During the fight which lasted a few minutes, Pineda and Tino wrestled and Tino's daughter was knocked to the ground. The police were called, and the Pineda group was accompanied from the camp. According to

Garcia, Tino told them not to return, telling them they would not get work again.

Felipe Garcia also testified that after the fight, Tino said that those who wanted to continue working should not be with the Union, which was no good or any benefit to the workers.

On Monday, September 19, Pineda, Andaya, Ramirez, Ruiz and Montes returned to work. Their starting work was delayed, and Union organizer Bobbie de la Cruz interceded on their behalf. Pineda testified that Espinosa said Enio was "shameless" for returning. After a short delay, the men were put to work.

They worked through Wednesday, September 21. The group missed work Thursday, returning on Friday, September 23. Tino Espinosa had a doctor's apointment in Lamont that morning and did not return to the fields until around noon. When the group returned that morning, they approached Maclavio Espinosa, who told them he would check with supervisor Cecil Graves before putting them to work. They were subsequently put to work. They worked 3-4 minutes, telling Maclavio they had to go to another farm where they were working or lose a day's work. When Pineda and Ramon Ramirez returned later that morning, Maclavio told them they could work. Pineda told him they did not want to work anymore, asking for their time and checks.⁵⁹ Maclavio told

⁵⁹ This story is corroborated by co-worker Andres

them to see Tino at the labor camp.

Tino testified that when he returned to the crew that day at noon, Maclavio informed him that the group wanted their time and checks. Tino had Cecil Graves sign their cards, and then Tino went to the camp at 1-1:30 p.m. to get his record books of "hours" and "boxes." Before their arrival, Tino fixed the time cards and checks. At 4:00 p.m., Enio, Florentine, Roberto, Ramon and Arturo arrived. According to Tino and worker Lorenzo Magana, who was with Espinosa, Pineda told Tino that they had come for their checks and time cards, saying that they did not want to work anymore. According to Pineda's testimony, Enio went to talk with Tino for a clarification of their job status, considering the fact they had been stopped twice. Pineda testified that Tino just handed them their cards without any conversation.

Turning my attention initially to Section 11(h) of the Complaint, Ramon Ramirez testified that Tino interrogated him regarding the Delano meeting, asking him what it had been about and how many attended. I credit Ramirez' version of this conversation with Espinosa. Clearly, this kind of conduct on the part of a supervisor interferes with employee rights set out in Section 1152 of the Act and thereby violates Section 1153 (a) of the Act.

Bustos, who was talking to Maclavio when Pineda and Ramirez arrived.

Ramirez also testified that Tino on more than one occasion told the workers that it was not to their benefit to join the Union because they would need something and he would not offer them anything (11(j)) . This statement was corroborated by General Counsel witness Felipe Garcia, who stated that Tino told workers after the fight, that those who wanted to continue to work should not be with any union. I credit the testimony of these employee witnesses. The statements by Espinosa threatened those who supported the Union with economic reprisal in violation of Section 1153(a) of the Act.

Before proceeding further, I must address a credibility problem I encountered with witness Tino Espinosa. Under cross-examination by General Counsel, Espinosa was asked a series of questions regarding the pre-election campaign. Espinosa claimed not to know the choices in the election or what union the organizers represented. Further, he did not know the name of the union. He also stated on two occasions that he did not know how the Company felt about the Union. It is hard for me to believe any of his responses to these questions. Considering the fact that Espinosa worked for Respondent since 1966, through the violent strike of 1973, his not recognizing the name "UFW" or not knowing the Company's position necessarily colors all of his testimony, diluting most of its believability. I find that he became aware in September that certain members

of his crew supported the UFW, and he questioned them about their union activities. As previously found, he threatened them with loss of employment based on that support.

Turning now to Section 6(n)(4), an example of Tino's verbal abuse and harassment was his telling employee Ramon Ramirez that he did not want "Chavistas" in his crew. He also warned Ramirez and others about signing cards when organizers came to the field. The credited testimony of Ramirez regarding "Chavistas" establishes a basic violation of Section 1153(a) of the Act, having a natural tendency of interfering with and discouraging employees from involving themselves in organizational activities.

Also under consideration in Section 6(n) (4) are the remarks by second foreman Maclavio Espinosa to Ramon Ramirez in the former's house. Ramirez testified that Maclavio ejected him from the garage, threatening him with bodily harm because he was a "Chavista." It is necessary to examine Maclavio's duties in order to determine whether these remarks were delivered by a supervisor or rank-and-file employee. His duties are not unlike other second foremen or helpers at Guimarra. Although Ramon Ramirez testified that he is in charge of half the crew, that assertion went uncorroborated. In fact, employee Felipe Garcia testified that the crew was not split. Although Maclavio earns \$.12 more per hour, he has no authority to make independent decisions of any import. He teaches the people,

helps and corrects them, moves water, brings ice and helps Tino move people to new locations. Maclavio assumes more responsibility when Tino occasionally leaves the crew, but supervisor Cecil Graves is ultimately responsible for the crew in these situations. Thus, Maclavio does not possess supervisory authority. Under these circumstances, his statement to Ramirez takes on no more significance than a statement by any fellow employee and does not violate Section 1153(a) of the Act.

Sections 6(n)(1) and (2) concern the apparent statements of Espinosa excluding these alleged discriminatees from the labor camp and denying them food. Robert Ruiz was the only witness testifying that Tino denied them food. The group then moved to a motel. Ruiz' testimony regarding this incident was filled with inconsistencies. He initially claimed the statement occurred 4-5 days after the Delano meeting. He then placed it some two weeks after their support for the Union began (approximately September 28). He also testified that it occurred 5 days before the fight, or around September 12. Because of these inconsistencies and the fact it was uncorroborated by any other witness, I do not credit his version of these events. I therefore dismiss Sections 6(n)(1) and (2) of the Complaint.

As for Section 6(n)(3), Ramon Ramirez testified that after he began supporting the Union, he often was sent to finish other workers' rows. Enio Pineda testified that

Tino checked boxes more often, insisting that they weigh all their boxes after their UFW support began. Robert Ruiz testified that carts for taking boxes from the fields no longer were made available to those who supported the UFW. However, Respondent employee witnesses Abel Jaramillo, Raul Castro and Andres Bustos all testified that carts were not always available. These witnesses testified that they often waited for carts or carried boxes out of the field. General Counsel witness Pedro Vera, while testifying with regard to another violation, stated that Guimarra had a policy of having workers weigh all boxes.

Thus, these practices which General Counsel alleges to be unfair labor practices appear to be Company-wide tasks and hazards incidental to the picking operation. As such, they are not violations of the Act. I therefore dismiss Section 6(n)(3) of the Complaint.

Considerable testimony was offered in connection with the fight between Pineda and Tino Espinosa (Section 11 (k)). According to the credited testimony of Respondent witness Louisa Garcia, Pineda entered the area of the camp too fast, raising "a lot of dust."⁶⁰ Espinosa approached Pineda, telling him that he was endangering lives. Pineda did not appreciate Espinosa asserting his authority, and he told him so. Both men had been drinking. A few minute fight

⁶⁰Mrs. Garcia testified that she was "scared" that they were going to kill her child with their car.

ensued. Espinosa's son Gilbert and daughter were involved. The Pineda group then was escorted from the camp by police. Because I am unable to find any connection between this fight and the Pineda group's Union activities, I find it unnecessary to pinpoint the actual phrase or blow that touched off the fight. Both men were operating under the influence of some alcohol. Both men became very territorial. Admittedly, Tino told the group that they would never get work again. However, the emotions at that point were running high because of the fight, not because of Union involvement .

Thus, finding no connection between the fight and the Pineda group's support of the UFW, I dismiss Section 11(k) of the Complaint. See Pleasant Valley Vegetable Co-op, 4 ALRB 11 (1978) .

I turn next to Section 6(m), concerning the alleged discriminatory discharge of Enio Pineda Ramirez, Florentine Andaya, Ramon Ramirez, Roberto Ruiz and Arturo Montes. All these workers signed union authorization cards in September. All attended the UFW meeting at Delano. Tino Espinosa questioned Ramon Ramirez about that meeting. The named individuals passed out Union leaflets and buttons, while wearing buttons on a daily basis. Also, I have found that Tino Espinosa interrogated employees regarding their UFW support and threatened them with possible loss of job if they joined the Union. Tino also admitted that after the fight he was

nervous around Enio Pineda, not wanting him in the crew because of the fight.

Following the Saturday fight, the Pineda group returned to the fields on Monday, September 19. They were delayed in starting work that day. Clearly, Tino was not delighted to see them return. He called Pineda "shameless." Union organizer Bobbie de la Cruz spoke with supervisor Graves before they were placed. The men then worked through Wednesday without incident. They did not appear for work on Thursday. When they reappeared on Friday, they again were told to wait for Company approval. They decided to leave. They then returned to the fields and were offered work by Maclavio Espinosa. They told Maclavio they were not interested in work. That message was later conveyed to Tino, who got their time cards in order. When they visited Tino later in the afternoon, with very little conversation, they asked for their time and checks.

These employees chose to leave the crew on September 23. In light of the animosity he felt toward these workers, Tino clearly may have contemplated discharging them at some point. However, work still remained available to them. The working conditions had not been dramatically altered. At most, their starting was delayed twice without loss in pay during the last week they worked. They apparently decided to work elsewhere. In these circumstances, I find General Counsel has failed to sustain his burden of

establishing that the five named individuals were discriminatorily discharged. I therefore dismiss Section 6(m) of the Complaint.

Finally, I turn to Section 6(1), the alleged discharge of Emiterio Rodriguez and Juan Zapata Rios. Those individuals were closely allied with the five workers in the Pineda group. They attended the Delano meeting, helped organize for the Union and often rode in Pineda's Riviera. Rodriguez also left the labor camp and shared a motel room with the other individuals in the Pineda group.

Rodriguez and Rios were picked up by the Immigration Service on September 9. Prior to their removal, another employee who lived at the camp, Martha Chavez, had been picked up and shortly thereafter returned to the camp. Much worker speculation centered around whether Martha Chavez' quick return could be attributed to the UFW s intervening on her behalf. Many witnesses throughout the hearing testified about rumors that the UFW could get Union members released from the Immigration Service.

Rios and Rodriguez last worked September 8, before returning to the crew for work on September 17. They were stopped by Tino and sent to Dave Stanley. Tino was aware that Stanley was not hiring. Tino sent them to Stanley as new employees without explaining that they were members of the crew. In effect, Tino's silence caused their termination.

Stanley testified that any employee could miss one

week of work without reapplying for a job. If an employee missed two weeks of work, he needed an excuse. Clearly, being picked up by the Immigration Service would have been a legitimate excuse. Stanley also stated that the non-hiring policy did not apply to workers with such a legitimate excuse. Stanley further stated that if Rios and Rodriguez had not asked for work, then he would not have stopped them.

Furthermore, Tino testified that during times when the crew was not hiring, he often secretly placed people when regular employees missed work. Although September 17 was a shorter than usual workday, only 49 of the maximum crew of 70 worked that day (GCX 33), Tino testified that the grape was very good that day. On Friday, September 16, Tino told the entire crew to come Saturday to pick Calmerias. Espinosa said that the much larger Friday crew all would have worked had they appeared for work on Saturday.

In this case, Tino Espinosa took the opportunity to rid his crew of two known Union supporters by his stopping Rios and Rodriguez and sending them to see Dave Stanley. Tino was aware of their Union membership and involvement in Union activities, their association with the Pineda group, and the fact that they had been released by the Immigration Service. Tino could have put them to work without consulting Stanley or sent a message to Stanley regarding their employment 9 days earlier. However, he chose neither course, anticipating that Stanley would reject them. Such conduct

on Espinosa's part violated Section 1153(a) and (c) of the Act.⁶¹

V. SECTIONS 6(0), 8, 11(c)

Steven Hopcraft, UFW paralegal worker from August 28, 1975 to August 10, 1977, joined Lupe Zacarias' crew 168 between August 17 and 20, while the crew was drumming. Hopcraft was hired as part of a group that included Luis Covarrubias, Lorraine Agtang, Guadalupe Medina, Emily Covarrubias and Irene Millena. At the time of his hiring, Hopcraft testified that 10-15 people filled out employment cards for foreman Zacarias and joined the crew.

From the outset of his employment, Hopcraft made attempts to organize the crew, speaking in favor of the UFW with other employees. Initially, he spoke guardedly, avoiding talk in front of supervisors. With the upcoming UFW convention at the end of August, Hopcraft urged crew members to attend. By August 26, Hopcraft's Union activities became more visible. He and 15-25 other crew members attended the UFW convention in Fresno.

On August 29, John Murray with an interpreter from another crew visited Zacarias' crew in the fields. A written

⁶¹My finding is based on Espinosa's course of conduct. I find it unnecessary to determine whether Dave Stanley asked Espinosa to identify the two men who had been returned from the Immigration Service before or after Rios and Rodriguez left the fields.

document prepared by Sal Guimarra was read by the interpreter in Spanish, propagandizing in favor of the Company. Murray then asked for questions. Luis Covarrubias asked whether workers would be fired for signing Union authorization cards. John Murray said "No" in English, while Lupe Zacarias stated in Spanish that "Those who sign will completely lose their right to work with the Company." Hopcraft immediately objected to Murray about Zacarias' translation. According to Lorraine Agtang, Murray was upset, and 7-8 workers began yelling at both Murray and Zacarias. Murray then told the crew that there had been a mistranslation. Hopcraft testified that the corrected version by Zacarias- was that "there is no guarantee there will be work for you." Murray stated that the matter was straightened out by telling the workers that no one would lose their job regardless how they voted.

Hopcraft then asked Murray why after 20 years, during an organizational campaign, did the Company offer medical insurance. Murray responded, "We really don't want the Union here, and we will do anything to keep it out." Hopcraft continued the questioning by asking Murray why the ALRB was taking Guimarra to court for unfair labor practices arising out of the 1975 election. According to Hopcraft. Murray became noticeably upset and accused him of making speeches for the Union. Murray quickly sent the crew back to work.

During that week, Hopcraft openly organized, passing out buttons and Union leaflets. On Friday, September 2, the

crew moved from drumming into stripping. The 35 crew members used plastic buckets to pick everything that was not rotten after three pickings. The workers dumped their buckets into a moving truck which required them to walk a distance of as much as one-eighth of a mile from the vines. Because the crew was not making the hourly wage, about 20 workers stopped working. In the crew's presence, Hopcraft asked John Murray for an hourly wage, trucks in the row and better footing in the rows. Murray agreed to raising the per ton price from \$22.50 to \$25.(30. However, he refused to pay an hourly wage. Because Monday was Labor Day, Murray told the workers to return on Tuesday, September 6.

Only 13 workers returned on Tuesday. On September 7, 7 workers appeared. By September 9, the crew had only 6 workers.⁶² On that day, Odelia Rodriguez, former UFW paralegal worker, applied for work with Zacarias' crew, wearing a UFW button on her shirt. Hopcraft presented her to Zacarias. Lupe said that he had orders not to hire. Odelia asked Zacarias how many were in the crew. He told her there were 7. He also mentioned to Hopcraft and others that the crew now had to work until 2:30-3:00 p.m. each day, rather than quitting at 11:00-12:00.⁶³

⁶²The size of the crew dropped to 3 on September 12, and remained at that level or below through September 30.

⁶³Hopcraft testified that subsequent to Lupe's statement, the crew never worked as late as 2:30.

On or about September 21, Zacarias' small crew merged with the crews of Innocencio Grajeda and Joe Guimarra Jr. According to Hopcraft, the combined crews approached 40, with 90-92% of them having signed Union authorization cards. Hopcraft testified that all but one of Grajeda's crew wore Union buttons and were Union supporters, while most of Joe Jr.'s crew vocally supported the Union.

Initially, I will turn my attention to the anti-Union remarks spoken by Company personnel on August 29. There is no conflict in the testimony of all witnesses that Lupe Zacarias, in translating a response to a question stated that "those who sign will completely lose their right to work with the Company." Hopcraft credits John Murray with disclaiming that notion in English prior to Zacarias' incorrect translation. Lorraine Agtang testified that 7-8 workers immediately protested about the translation. All witnesses also agree that Murray finally corrected the misstatement.

Thus, the only question that remains is whether the statement had a coercive effect on the approximately 40 crew members on August 29, Although there was an eventual correction and -extensive discussion regarding the statement, most workers apparently spoke only Spanish and conceivably did not understand some of the discussion. Objectively considering the chilling effect of such a blatantly illegal remark delivered to 40 workers, I find a violation of Section 1153(a) of the Act despite any subsequent clarification.

While finding that Zacarias' misstatement violated the Act, I do not find that John Murray's communications to employees that day interfered with employee rights. In responding to Hopcraft's question, Murray stated, "We really don't want the Union here, and we will do anything to keep it out." Murray in no way threatened employees with reprisal by this statement. The statement was delivered in response to a provocative question posed by a pro-Union employee, and not in the context of other independent unfair labor practices. Under such circumstances, I find that Murray's remark did not violate Section 1153(a) of the Act.

A more difficult question revolves around determining whether Crew \$68 was constructively discharged on or about September 3. General Counsel's main contentions in this area are: (1) 6 workers were paid below the hourly wage for the week ending September 10; (2) John Murray did not tell the workers the Company intended to pay the hourly wage; (3) working conditions were completely unacceptable for the workers to make a decent wage; (4) no other stripping crews experienced the depletion of Crew £63; and (5) it is absurd for one foreman to supervise 3 workers. General Counsel argues that working conditions were changed for discriminatory reasons.

An examination of these issues requires analysis of Company records. General Counsel's contention regarding the 6 underpaid workers is incorrect. All 6 were paid the

minimum hourly wage of \$3.25 an hour.⁶⁴ Furthermore, Steve Hopcraft's earnings at the Company exceeded the minimum hourly wage every week except one.⁶⁵

Although John Murray did not tell the workers on September 2 that the Company had a policy to pay the minimum hourly wage, he did agree to pay them \$25 per ton rather than \$22.50. Contrary to General Counsel's contentions, Murray encouraged workers to return on September 6 at this higher rate. However, the record is clear that he made no concessions to the workers regarding the positioning of the truck, which was later placed in the vines.

General Counsel further urges examination of RX 31 to demonstrate that no other stripping crew suffered the depletion of Crew #68. However, all other crews appearing in that exhibit already were stripping by August 29. Only

⁶⁴General Counsel apparently miscalculated the wage by dividing the net wage by the number of hours worked rather than using the gross amount. The following workers made \$3.25 an hour for the week ending September 10: Rosie E. Guzman, Luis M. Covarrubias, Irene V. Millena, Lupe M. Fernandez, Emily Covarrubias and Lorraine Agtang (GCX 28).

⁶⁵Hopcraft averaged the following hourly wages:

8/20/77 -- \$3.50	9/10/88 -- \$3.50	10/1/77 -- \$4.00
8/27/77 -- \$3.50	9/17/77 -- \$3.50	
9/3/77 -- \$3.15	9/24/77 -- \$4.10	

⁶⁶Throughout the hearing, there was testimony by Company personnel regarding Respondent's policy to pay the minimum hourly wage when not earned at the piece rate. Although I stop short of making a finding that workers commonly knew of this practice, I note that many workers with past experience working for the Company necessarily must have been aware of such a policy.

Crew #68 transferred from drumming to stripping on September 2. This comparison in itself does not demonstrate a pattern of discrimination.⁶⁷

Regarding General Counsel's argument that it is absurd to think the Company would have Zacarias supervise 3 workers, examination of RX 29 shows that he did just that in 1976, a year when no organizational activity occurred. Although the policy may seem foolish, I am unable to infer discriminatory motive from Respondent's use of foreman Zacarias.

Furthermore, Steve Hopcraft testified that a very pro-Union atmosphere developed from the Company's combining the 3 stripping crews. Crew 68's Union supporters joined Grajedo's crew, all but one of whom wore Union buttons, and Joe Guimarra's very vocal pro-Union crew. Clearly, many more members of Crew #68 could have elected to join the stripping operations on September 6.

Thus, all these arguments regarding the constructive discharge of Crew #68 fail to establish a discriminatory motive. General Counsel has failed to sustain his burden of proof. Therefore, I dismiss Section 6(0) of the Complaint,

⁶⁷In the same light, Respondent's urging a comparison of Crew #68's 1975, 1976 and 1977 daily field labor tickets provides little assistance. Although Lupe Zacarias' crew diminished in size when it began stripping all 3 years, the job classification code also shows that additional jobs, not performed in 1977, preceded stripping in 1975 and 1976 (GCX 27, RX 29,31,32). Thus, an inference cannot be drawn from the records alone.

Finally, I turn to Section 8 of the Complaint concerning Odelia Rodriguez' application for work on September 9. Both Murray and Zacarias testified that the crew was frozen on September 2. Clearly no worker was hired during the stripping operation (GCX 28). Even though Zacarias mentioned the possibility that the few remaining workers would have to work longer hours, that possibility never materialized. I find that Odelia Rodriguez applied for work at a time when the crew was not hiring. Although she wore a Union button, I find that Zacarias did not hire her because John Murray had given him a "freeze" order that was not discriminatorily motivated. I therefore dismiss Section 3 of the Complaint.

W. SECTION 6(p) -- 1,25,18,69 new 6

Eddie Russel applied for work in late June with Horace "Cowboy" Hamilton's crew. Although Hamilton could not place him as a tractor driver, Russel's specialty, Horace gave Eddie a job hoeing weeds. After two days hoeing weeds, Hamilton gave him some tractor work. Within two days of his hiring, Cowboy Hamilton also gave Russel's nephew, Tom Glover, a job hoeing weeds.

Russel testified that he drove a tractor for one month, when Hamilton approached him one day, asking whether he had "seen any strange cars." Hamilton told him not to stop working if he saw cars, but he should tell

Hamilton.

Russel recalls another conversation with Hamilton where Horace told him that Joe Guimarra said there would be a wage freeze if the Union won and maybe a raise if the Union lost. Russel stated that Hamilton asked him about his sentiments regarding the Union, and Russel told him that he was a Union man. Russel added that he thought Guimarra would be a better place to work with the Union. Hamilton told him that every man has his own opinion.

On August 16, Hamilton told his weeders that Joe Guimarra wanted them to cut grapes the next day, telling them to report to supervisor Hubert Burkhead. When Russel and another worker arrived at Burkhead's crew the next morning, Burkhead sent them to get clippers. Russel contends Burkhead rejected him because he had no prior experience. Russel recalls returning to Hamilton's crew with Glover for two more hours of weeding before their permanent layoff.⁶⁸ Burkhead testified that Russel never returned to his crew to work. However, on a few occasions, Russel and another individual remained in their car watching the crew prior to work. The car then left the area. Burkhead

⁶⁸Russel testified that he left his mother's phone number with Hamilton in the event that more tractor work became available. Hamilton in fact called Russel one month later and left a message with Russel's mother. Russel said that his mother did not tell him. By the time Russel again saw Hamilton, the position was filled. At that time, Russel did not ask for other work. Hamilton testified that he did not hire another tractor driver until 1978.

testified that no experience was necessary to cut juice grapes or to drum.

The resolution of this allegation, along with the accompanying objections, centers solely on credibility. I find Eddie Russel to be a particularly unbelievable witness, and I therefore credit little of his testimony.⁶⁹

Hamilton admits having one conversation with Russel about the Union. Hamilton recalls talking about troubles with Chavez in the past. However, after Russel "out of the blue" declared himself to be a Union man, Hamilton sent him and Tom Glover to work for Burkhard when the weeding was completed on August 16, Russel and Glover rejected this offer of continued employment. I find that neither Russel nor Glover were ever in fact terminated or laid-off. I therefore dismiss Section 6(p) of the Complaint.

X. SECTIONS 6(q), 11 (n) , 11 (.b) , 11 (a)

Domingo Telles, Juan Carrera and Hector Carrera joined Jose Chavez' crew at Respondent in April. As

⁶⁹Russel had numerous credibility problems. He testified that he worked a solid month driving tractor before the "strange cars" conversation with Hamilton. Company payroll records indicate that he worked 16 days for the Company, 10-1/2- weeding and only 5-1/2 tractor driving (RX 66). Further, Company records fail to reveal the additional weeding he claimed to have done after August 16. Russel also stated that he never hoed weeds in cotton, and that on August 16 he hoed in the plum orchard. According to Company records, all weeders in Hamilton's crew worked in cotton on August 16 (RX 63-68).

members of the UFW, they decided to organize the crew by themselves. They talked to workers, solicited authorization card signatures and distributed leaflets,⁷⁰ signs, bumper stickers and buttons. By mid-June, they had given away 6-7 bumper stickers to crew members. Domingo Telles recalls that after the first 4-5 stickers were placed on cars, within 2 hours, many had been removed.

Domingo Telles rode to work in a car owned by Juan Carrera. The bumper sticker on that car was removed on two occasions. Telles stated that the first bumper sticker appeared to be scraped off with a knife.

At the end of August, Domingo, Juan and Hector attended the UFW convention in Fresno. Domingo had been selected by UFW negotiator Jim Drake to give a speech at the convention.⁷¹ Telles asked all farmworkers for help in winning the Guimarra election for the Union.

Following the convention, and shortly before the election, Alfred Guimarra visited Jose Chavez' crew to speak to the workers and distribute literature. In the presence of workers, Domingo accused Guimarra of lying. Juan Carrera tore up the leaflet and threw it at Guimarra's feet, telling him he wanted the truth, not false promises. Guimarra told Carrera that he was crazy and did not have to

⁷⁰In fact, foreman Chavez testified that the only crew workers he ever saw passing out Union literature were Domingo Telles and Juan Carrera.

⁷¹GCX 21 pictures Telles addressing the convention. A copy of this leaflet later came into foreman Chavez' possession.

listen if he objected.

During Guimarra's visit, Domingo had approximately 12 UFW buttons on his straw hat and 7 on his shirt. When Guimarra saw him, he gave Telles a thumbs down sign. Chavez told Telles he looked like a clown. Domingo responded that he could do as he wished with his own hat. Telles recalls many occasions where Chavez would ridicule him for the Union buttons on his hat.

When Guimarra left, foreman Chavez reproached them, asking them why they had done that. While talking to a group of 4-5 workers, Chavez said the boss was going to get angry and bring in machines. Chavez also stated that people were going to lose work. Telles argued with him that the grower could not bring in machines. Chavez suggested that he do something for his own children, not others.

Telles testified that 2-3 days before the election, a majority of the crew was wearing Union buttons. At that time, worker Marcello Galvan, who rode to work with Antonio Oselleda, was standing near Oselleda's car. Telles had put a bumper sticker on Antonio's car, which had been defaced. Second foreman Jose Martinez approached and asked Antonio what had happened to the bumper sticker. Another worker, Luis, said that he did not know who it bothered. Martinez, according to Galvan's testimony, ripped and clawed off the bumper sticker.

Telles and the Carreras worked with the crew through the mid-October grape picking. The crew was then laid-off. Upon leaving the crew, Telles left his phone number with foreman Chavez. Chavez told them he would call. Although they did not receive a call, Telles and the Carreras attempted to rejoin the crew for pruning in late December. Hector called Chavez by phone on Tuesday or Wednesday, December 21 or 22. Chavez told him there would be work, and he should call again on Friday. When Hector called, Chavez inquired whether he was looking for a job for Juan and Domingo also. When Hector responded in the affirmative, Chavez said there was no work.

Shortly after the phone call, Juan and Domingo visited Chavez in the fields. They testified that they saw many new faces in the crew. They again were refused work. Subsequently, Juan and Domingo went to Chavez' house and received the same answer. On April 19, 1978, Hector telephoned Chavez asking for work. Jose informed Hector that he had too many people, but Chavez encouraged Hector to call again. Hector testified that he telephoned Chavez one time more with the same results.

Respondent contends that Domingo, Juan and Hector voluntarily left the crew in October. When they reapplied for work, the crew had its maximum compliment of workers. Respondent further disclaims any responsibility for acts of second foreman Jose Martinez because he is not a

supervisor as defined by the Act. Further, any conversations Chavez may have had with employees regarding bringing in machinery did not discourage crew members from joining the Union.

There is no dispute that Domingo Telles and Juan and Hector Carrera were extremely active in organizing the crew. According to foreman Chavez, they may have been the only crew members involved in organizational activities. Furthermore, Chavez was aware that Telles had been selected to speak to the UFW convention. Domingo's picture, was prominently displayed in a Union leaflet that was distributed to Chavez' crew (GCX 21). Chavez testified that he had saved a copy of the handout.

Furthermore, there is no dispute that Domingo, Juan and Hector affixed bumper stickers to crew cars and the stickers later were defaced. On one such occasion, employee Marcello Galvan testified that second foreman Jose Martinez, 2-3 days before the election and in the presence of 2-3 workers, clawed and ripped a bumper sticker off the car owned by Antonio Osellada.⁷² However, Martinez serves the crew as a second foreman or helper and possesses no particular duties that would vault him into supervisory status. His duties include placing the people in rows and then checking to see that they leave no grapes behind. If

⁷²Martinez provided the explanation that he merely pulled off a little corner that was already torn. I find Martinez' housekeeping version quite incredible.

grapes are left, Martinez will report it to Chavez or correct the workers himself. He does not hire or fire employees, and no evidence was presented to establish that he could effectively recommend layoffs or terminations. He exercises no independent judgment. See An ton Caratan and Sons, supra. I therefore find Martinez not to be a supervisor as defined by Section 1140.4(j) of the Act, and I therefore dismiss Section 11(b) of the Complaint.

A few days before the election, Alfred Guimarra spoke to the crew and distributed GCX 8, which was signed by President Sal Guimarra. Apparently, beginning on or about July 20, foremen and supervisors had distributed this leaflet. General Counsel alleges that the leaflet contained a threat of economic reprisal for signing an authorization card and made a promise of benefit by soliciting employee grievances during an organizational campaign.⁷³

The Board has considered the precise language, "refuse to sign a Union authorization card and avoid a lot of unnecessary turmoil," finding that it contains no threat of reprisal. Mel-Pak Ranches, 4 ALRB No. 78 (1978), citing NLRB v. Gissel Packing Co., 395 U.S. 575 (1969).

⁷³The following sentence relates to the threat of economic reprisal: Refuse to sign a Union card and avoid a lot of unnecessary turmoil. The following sentences relate to the promise of benefit: Our company does not want or need a union. The Company stands ready to deal with each and every employee individually; to hear his or her problems, to seek and implement solutions whenever feasible.

The second part of the letter presents a different situation. Respondent clearly states that "Our Company does not want or need a union." In the very next sentence, it tells employees, "The Company stands ready to deal with each and every employee individually; to hear his or her problems, to seek and implement solutions whenever feasible." (emphasis added). In essence, Respondent, facing an organizational drive by the UFW, solicited grievances which carried an implied promise that the grievances would be remedied. Such conduct violates Section 1153(a) of the Act. See Associated Mills Inc., 190 NLRB 113 (1971); Tom Wood Pontiac, Inc., 179 NLRB 581 (1969); Swift Produce, Inc., 203 NLRB 360 (1973).

During Alfred Guimarra's visit to Jose Chavez' crew, all witnesses testified that Juan Carrera tore up the Company leaflet and threw it at Guimarra' s feet, informing Alfred of his displeasure with the Company's false promises. According to Telles' credited testimony, he accused Guimarra of lying. Guimarra flashed Telles a "thumbs down" sign, and Chavez criticized him for looking like a clown with all his UFW buttons on his hat. After Guimarra left, Chavez criticized them in the presence of other workers,⁷⁴ telling them that the boss was going to get

⁷⁴Although Telles and Juan Carrera placed employee Arturo Najera in this group, Najera does not recall the incident. Both Telles and Carrera were particularly believable witnesses. I therefore credit their testimony that Chavez addressed a small group of workers when Guimarra left.

angry and bring in machines and people were going to lose work. Although Chavez did not remember the specific conversation, he recalled mentioning machinery replacing workers in an idle conversation that had nothing to do with people joining the Union. I credit the testimony of Juan and Domingo, finding that Chavez threatened them with loss of employment through the use of machinery if the Company bosses became angered over these workers' Union activities. Such a threat clearly violates Section 1153(a) of the Act absent any facts showing the economic necessity of such a prediction. Akitomo Nursery, supra.

I finally turn to the issue of Chavez' alleged refusal to re-employ Domingo, Juan and Hector. I credit the workers' testimony that they applied for work on three occasions beginning on or about December 21 or 22. I further find that they reapplied again in April, 1978. Respondent contends that the crew was frozen at 21 for the pruning operations. However, crew supervisor Paul Otoyá admitted that the crew was not frozen at 21 during the pruning. He conceded that 5 more employees were in fact added to the crew during pruning.

General Counsel has made out a convincing case of discrimination. There is no conflict of testimony that Domingo, Juan and Hector were perhaps the only workers to organize the crew. Their activities were extensive and very visible, Chavez was very aware of their organizational

activities and the fact that Telles addressed the UFW convention. Chavez expressed his displeasure to them on more than one occasion and threatened them with loss of employment through mechanization if they continued to anger Alfred Guimarra. When these workers left the crew, Chavez told them he would telephone them. They persistently attempted to get work in December, 1977 and April, 1978, Chavez refused to rehire them during a period when the crew was not frozen. Chavez seized the opportunity of ridding his crew of its staunchest Union supporters. He refused to rehire them because of their Union activities in violation of Section 1153 (a) and (c) of the Act.

Y. SECTIONS 7, 10(b), 11 (g) - 14,41

Everado "Lalo" Saldana, an organizer with the UFW in 1977, visited Manual Del Campo Sr.'s crew at lunch time on September 1. While workers in clusters sat under the vines, Del Campo ate his lunch in his pick-up truck which was parked approximately 10-15 feet from the workers. While Saldana talked to the workers, Del Campo got out of his pick-up and interrupted the organizer. Saldana testified that Del Campo told them, "Boys you do not have to sign." While Saldana moved to a second group of workers, Del Campo told them that "Chavez' union was not for the benefit of the workers." Saldana attempted to tell the workers that the Union helped undocumented workers, but

Del Campo interrupted. Saldana told Del Campo that he should not interrupt the organizer.

On September 6, crew employee Jesus Perez asked Del Campo for work for friends. Del Campo responded, "Yes, but are they Chavistas?" Perez told him he did not think they were Chavistas. When they arrived for work, new workers Teodolo Ortega and Enrique Aboytes, upon being questioned by Del Campo, denied being members of the UFW. The new group started to work with their hands while Jesus Perez went to town for some grape knives. The new employees were then asked by Del Campo to fill out employment cards. Del Campo then handed the cards to superintendent Roy Koenig. Del Campo then stopped the work of these new employees, telling them that they may not be able to work because the Company did not want to hire new people who might be "Chavistas."

When Perez returned with the knives, Del Campo told him that his friends had to wait because they might belong to the Union. Del Campo told Perez that the owners of the Company and his supervisor Roy Koenig did not want to hire new people for that reason.

Del Campo's version of the September 1 incident is that he approached the organizer and workers 5 minutes before the lunch period ended. Del Campo, a foreman with Respondent since 1953, testified that he said, "Whoever wants to sign with the Union go ahead and those who don't

tell the organizers they don't because we've got to get going." Del Campo also said he told workers that day that, "It was true they could fix Immigration because the Teamsters couldn't." Del Campo, admitting he listened to conversations, further testified that he overheard Saldana's attempts to obtain signed authorization cards from the workers that day. He said that Saldana, during the entire half-hour, was insisting too much about getting signatures. "By the time I said to sign etc., workers weren't saying anything, workers were looking down as if they were tired."

Thus, by his own admission, Del Campo surveilled Saldana's meeting with workers on September 1. He admits telling workers to sign or not sign authorization cards during a time when he had no right to participate in those conversations. He further admits mentioning the UFW's attempts to help undocumented workers avoid deportation.

I credit the remarks made by employees Perez, Ortega and Aboytes regarding Del Campo's inquiring on September 7 whether they were "Chavistas." I further credit Perez' statement that Del Campo said the Company owners and Roy Koenig did not want new people because they might belong to the Union. I further credit organizer Saldana's version of the September 1 meeting.

To corroborate Del Campo's testimony, Respondent

called crew worker Javier Salcedo, who testified that Del Campo on September 1 said, "He who wants to sign, let him sign, he who doesn't want to, that is his will so that they will leave so we can work." Salcedo also denied that Del Campo told people not to sign "because the Company would not give them any work if they did sign and he [Del Campo] did not like for them to sign."

Salcedo's declaration, executed on September 6, was admitted into evidence (GCX 60). Inconsistent with his testimony, he stated that Del Campo said, "When people from the Union came, we should just get out of our cars and go hide ourselves in the field." He further stated, "Today he told us to tell the organizers that we didn't want anything to do with the Union. He said that he didn't want any strikers there because he was against them. He said I don't want people who are huelgistas. Then he said he would run out anyone who talked to organizers." ⁷⁵

I find that Del Campo, on September 6 or 7, purporting to speak for the Company owners and supervisor Roy Koenig, practiced a discriminatory hiring policy. He asked

⁷⁵I find that Salcedo was impeached by these prior inconsistent statements in his September 5 declaration. Further, pursuant to California Evidence Code Section 1235, the prior inconsistent statements will be admitted as substantive evidence. When the declaration (GCX 60) was admitted into evidence, Respondent had an opportunity to recall Salcedo as a witness. Respondent chose not to recall him to explain or deny the prior statements. In the interests of justice, I dispense with requiring his further examination.

Jesus Perez whether his friends were "Chavistas." When they arrived at the field, in their presence, he again questioned them. Del Campo later explained to them that he was making them wait because of their possible affiliation with the UFW. Such conduct clearly violates Section 1153 (a) and (c) of the Act.

Del Campo further threatened employees with loss of employment for associating with organizers. Along with other threats in early September, he told workers that the Company would run organizers out. Threatening an employee with loss of employment for talking to union organizers violates Section 1153(a) of the Act.

Finally, I find that Del Campo interfered with organizer Saldana as he attempted to get signed authorization cards. By his own admission, Del Campo listened for one-half hour, interrupting Saldana on at least two occasions. Most basic to employee rights guaranteed under Section 1152 is the ability to meet privately with organizers outside the presence of coercing Company foremen. Del Campo's conduct on September 1 again violated Section 1153(a) of the Act.

Z. SECTION 9 -- 71

Elpidia Mesa worked for Respondent from 1974 to 1976. In 1976, she picked with her daughter Clara Ortega in Macario Pinson's crew. The early part of the season

went smoothly. Pinson told them they would have a job the following April. However, during that season, Elpidia became dissatisfied with the conditions at Pinson's labor camp, where she and her family lived. Elpidia complained to Pinson about the food.⁷⁶ She also complained about the restrooms being closed for a long period of time (2-3 weeks). The restrooms were closed during that time because the toilets were overflowing into the kitchen.

Elpidia lodged her complaints with Pinson and the camp cook, Antonia Mata. Mata recalls Elpidia complaining about the restrooms and accusing Mata of being "smart." Mesa insisted that Mata demonstrate how the toilets overflowed into the kitchen. Portable toilets were used at the camp during the period. Elpidia recalls Pinson and Mata conversing about her restroom complaint, with Pinson suggesting that "Mexicans could go outside in the vineyards . "

In September 1976, Elpidia became dissatisfied with wages and complained to Sal Guimarra. Sal told her to leave if she were not satisfied. On September 13, 1976, Elpidia and Clara decided to leave the crew. On that day, Pinson expressed his displeasure about the UFW, telling workers that he opposed the Union because too much money

⁷⁶Elpidia Mesa testified that after her food complaint, Pinson posted a sign in the dining hall suggesting that those who were dissatisfied with the food could eat in a restaurant.

was paid to it.

Elpidia, her husband, and Clara returned to the Bakersfield area on July 18. Within a few days they applied for work with Pinson. Pinson refused them work, telling them that he had no packers for them.

Respondent's defense to this allegation, expressed through Pinson's testimony, is that Elpidia Mesa never applied for work in 1977. Respondent concedes that during the payroll period ending July 20, 2 workers were added to the crew (GCX 49). Pinson testified that he would have hired them had they asked for work.

Thus, the initial question to be determined is whether Elpidia, Marcos and Clara applied for work with Pinson in 1977. I credit Elpidia's testimony. She was a very believable witness, who told her story with considerable emotion. Pinson, on the other hand, dismissed many of her statements in a cursory fashion. He denied ever hearing a complaint from her about the restrooms or the food. Although Antonia Mata denies that Mesa complained about the food, she concedes that she complained extensively about the restrooms. I credit Mesa's testimony that she also complained about the food.

Further, while Pinson denied making any statements about the UFW, he admitted on cross-examination that his brother's house at one time had been firebombed by the UFW. However, he denied any feelings of animosity towards the Union.

I find that, prior to her leaving the crew in 1976, Elpidia Mesa became a persistent source of irritation to Pinson with her complaints about the food and restrooms at the labor camp. Mesa even insisted that Antonia Matta open the bathrooms and show her how the toilets flooded the kitchen. Her concerted activities persisted with her asking Sal Guimarra why the Company did not pay higher wages.

With this background of attempts to improve working conditions, Pinson decided not to rehire her or her family in 1977. Pinson's testimony that she never reapplied is weak and not believable. I therefore find that Elpidia Mesa, Marcos Mesa and Clara Ortega were denied employment because of Elpidia's concerted activities in violation of Section 1153(a) of the Act.

AA. SECTION 10(a) -- 8,45,48

UFW organizer Leticia Hernandez visited Joe Guimarra Jr.'s crew in Ducor on or about August 31. She asked him when his crew started work, had lunch and when it quit. Guimarra told her the crew began work at 6:30 a.m. and ate lunch at 11:30 a.m. He told her he did not know when the crew would be quitting.

On September 1, Hernandez returned to the crew at 6:00 a.m., and began talking to workers who were waiting to begin work. Joe Guimarra Jr. arrived at 6:15 and told

everyone to go to work. Hernandez testified that a worker was signing a card at the time as Joe passed within three feet of the worker, looking over the worker's shoulder. Hernandez told Guimarra that he had no right to be there. Joe responded that if they didn't get back to work they could be fired, telling Hernandez to shut up. The workers then made their way into the fields shortly before 6:30 a.m.

When Hernandez returned that morning to the crew at 11:00 a.m., she waited for the 11:30 lunch break. According to Hernandez, Joe Jr. returned within 15 minutes, telling everyone to go back to work. Hernandez protested that it was too early. Joe told her that the crew goes back when he tells them to go back.

On September 2, Leticia arrived at 6:00 a.m. Joe again arrived at 6:15 a.m., telling everyone to go to work. The crew entered the fields at that time.

On Saturday, September 3, UFW organizer David Valles visited the crew. Valles asked Joe Jr. when the lunch break was scheduled. Joe told him 11:30 a.m. When Valles returned at 11:30, he observed supervisor David Clough in the fields telling workers to go home. Valles questioned Clough, who referred him to Joe Jr. Joe told him that he was sending the workers home because they wanted to go home.

Hernandez testified that every day, three times daily, Joe would tell employees that if they signed authorization cards, they could be fired; and if the Union won, they would

have less hours to work. The only employee witness in the crew to testify, Jose Castaneda, made no mention of this alleged threat. Castaneda testified that on one occasion Guimarra called him a "Chavista." Castaneda also testified that he signed an authorization card in the fields when he assumed Joe Jr. was present, Castaneda recalls three occasions when the crew yelled "Viva Chavez" at Joe Jr., who responded with "Viva Guimarra." Castaneda also stated that he was not consulted by Guimarra about quitting early on September 3.

Hernandez further testified that all of the approximately 25 crew members signed authorization cards. She further stated that this problem of the crew not being in the fields did not occur often.

Joe Jr. testified that he changed the starting time from 6:30 to 6:15 at the end of August because of employee requests and the extremely high afternoon temperatures. Joe Jr. had received approval from his father, Alfred Guimarra, for starting the crew earlier. Joe Jr. admitted that he had confrontations with Leticia Hernandez over the new starting time and his calling workers back to work after lunch. Joe Jr. maintained that he always gave them a full 30-minute lunch break. He further testified that he attempted to get stragglers started at 6:15 a.m. on September 1, having announced the new starting time at the end of the previous work day.

Joe Jr. further testified that the workers were given the option of working after 11:30 a.m. on September 3. Out of the 21-23 workers present that morning, only 5-7 remained.

From the above-described events, General Counsel alleges interference with UFW access by altering normal working hours and threatening employees with loss of employment. However, by her own admission, organizer Hernandez rarely encountered a problem of the crew not being present. In fact, she was able to get all employees to sign authorization cards. As to the threats she attributed to Joe Jr., her testimony went uncorroborated. Because her statements regarding the threats seem grossly exaggerated and the fact that no employee testified about these alleged threats, I do not credit that part of her testimony.

Twenty-two year old Joe Jr. supervised a group of equally young men. They often enjoyed friendly banter among themselves. The fact that the entire crew signed authorization cards must be acknowledged. Clearly, there did not exist an atmosphere of fear in this particular crew.

I find that General Counsel did not sustain his burden of proof. Therefore, I dismiss Section 10 (a) of the Complaint.

On or about September 8, UFW organizer David Valles and a UAW organizer from Canada visited Jose Liceaga's crew at lunchtime. As they entered the fields in their car displaying a UFW bumper sticker, they encountered Joe Guimarra Sr., driving a yellow Cadillac out of the fields. Guimarra stopped them, asking them what they wanted. They identified themselves as UFW organizers. Each organizer wore an identification badge. Guimarra asked them whether they had been there before. When they responded affirmatively, he told them they were only supposed to come one time.

Joe Guimarra Sr. then made a U-turn in his car and sat watching while Valles and the other organizer approached workers coming out for lunch. Standing by his car, Guimarra asked foreman Licaaga, in the presence of workers, whether these organizers previously had visited the crew. The organizers attempted to talk to workers who were eating their lunch under the vines. Valles testified that the majority of workers sat in the front row near the avenues where Guimarra's Cadillac was parked.

Some minutes later, John Guimarra Jr. appeared, demanding identification from the organizers.⁷⁷ They again identified themselves. After some discussion, John Jr.

⁷⁷Valles testified that he had seen John Jr. 50-75 times front the 1973 strike through the 1975 season.

told them they could stay. Valles testified that only 5 minutes remained in the lunch break. He also testified that the workers were not responsive to the organizers that day.

The acts of interference and surveillance by Joe Sr. and the interrogation by John Jr. interfered with the UFW organizers. The organizers had a right to be in the fields. However, they were subjected to identifying themselves and arguing their positions to two high ranking Company officials in the presence of workers. The Guimarras' conduct on this occasion interfered with protected organizational activities, thus interfering with basic Section 1152 rights. I therefore find that this conduct violated Section 1153 (a) of the Act.

CC. SECTION 10(d) -- 44

UFW organizer Josephina Flores frequently visited Piano Padillo's crew during early September. On or about September 9, at lunch time, she was talking to workers, when she noticed supervisor John Murray three rows away. She observed the workers following his movements.

Flores approached Murray and told him to leave because she was talking to the workers. Murray, angry and upset, told her to leave. Flores told him she was a Union organizer and had a right to be there. Murray told her that she was on his property. As the conversation

intensified, Murray emotionally used his hands. One hand held grapes and the other a pair of clippers. Floras testified that the crew of 75-90 sat under the vines 15-20 feet away from them. After this confrontation, Flores left the field.

Murray testified that he was mad and upset because the previously unidentified organizer told him he had no right to be there. He denied using the clippers in a threatening manner.

Although it appears that the confrontation spontaneously occurred, it did so in the presence of Padilla's crew at lunchtime. The organizer clearly had a right to talk to workers without 'Company interference at that time. Although Flores apparently handled the situation in less than a diplomatic way, Murray's responding anger and his attempt to oust the organizer from the fields interfered with the employees' organizational rights. I therefore find that such conduct violated Section 1153(a) of the Act.⁷⁸

DD. SECTION 10(e)

Juliana De Wolf, a nun and UFW volunteer, on September 10

⁷⁸However, I do not find that Murray threatened Flores with physical harm. When the conversation began, he had a bunch of grapes in one hand and his clippers in the other. As the discussion progressed, he moved both hands with considerable emotion. I credit Murray's testimony that he in no way threatened the organizer with his clippers.

and 11, began visiting Von Newhouse's crew at the Bianco Ranch prior to their going to work. The Bianco location serves as a headquarters with gas pumps, barn, some housing for workers and an equipment yard. Newhouse, in a Company truck, picked up 6-10 workers from that location on a daily basis.

Juliana testified that she encountered Newhouse most every day between September 10 and September 19. Each morning prior to work, she distributed Union leaflets to irrigators and tractor drivers. She testified that Newhouse's routine each day included parking his truck near the gas pump and leaning on the shed waiting for the workers.

Juliana testified that while she talked with workers, Newhouse always would come over and stand close to the group. The first day it happened, Juliana told him that he could not be in the area. However, the same events occurred on subsequent days. Juliana observed that workers would stop asking questions about the Union when he approached. She also recalls Newhouse asking workers for Union leaflets rather than asking her.

Newhouse denied ever coming closer than 50 feet away from Juliana and the group. Another truck driver for Respondent, William Romero, who filled his truck with gas each morning, testified that he never observed Newhouse close to the group. However, Romero admitted that he

was not paying much attention to Newhouse, Juliana or the workers.

I find Juliana De Wolf to be a more believable witness than Newhouse. Newhouse had great difficulty making eye contact with the attorneys asking him questions and with me. I find that Juliana's testimony establishes that Newhouse was present for the purpose of surveilling her conversations with workers, thus violating Section 1153(a) of the Act. See Tomooka Bros., supra. Konda Bros. 2 ALRB No. 34 (1976); Trefethen Vineyards, 4 ALRB No. 19 (1978).

EE. SECTION 10(f)

Josephina Flores, UFW organizer, began visiting Jovita Medina's crew in late September. Flores testified that she asked Medina on four occasions when the crew was taking lunch. Medina would sometimes tell her 12:00, and on occasion, Josephina would return to find the crew gone for the day. Flores testified that she also had great difficulty finding crews at the end of the day.

Foreperson Medina testified that she never talked to any organizers other than Cesar and Richard Chavez. She stated that her crew normally ate at 12:00 unless they had only 30 more minutes of work. In that case, no lunch break was taken. She also testified that the crew received new ranch assignments on an almost daily basis.

She received orders from John Murray regarding when to stop the crew and where to send the crew the next day. Medina testified that she personally left the fields at noon and often did not know where the crew would work the next day. Workers telephoned her later in the afternoon for that information.

General Counsel has failed to sustain his burden of proof. From examination of Josephina Flores' testimony, no case of discrimination has been established. All that is revealed is that she sometimes missed the crew at noon⁷⁹ and had difficulty finding crews at the end of the day. In no way can I infer discriminatory motive from her brief encounters with foreperson Medina. Although I do not believe that Medina never talked to organizers, no violation of the Act surfaces from these events. I thus dismiss Section 10(f) of the Complaint.

FF. SECTION 11(d) - 21

Jose Castaneda worked in Joe Guimarra Jr.'s crew in 80 1977. While the workers were deleafing, a machine⁸⁰ came through the fields stripping leaves off the canes. Castaneda

⁷⁹As General Counsel witnesses David Valles and Steve Hopcraft testified, piece work sometimes varied the lunch hour from 11:00 to 12:00.

⁸⁰Joe Guimarra Jr. testified that the machine regularly was used in the fields on various varieties of grapes.

testified that Guimarra told a group of 10 workers that "if the Union won, hours would be cut, and machines would take our jobs." Guimarra recalled the conversation, but testified, "I told them if the price of grapes didn't go up to the price of labor, then we'd have to mechanize."

From a reading of Guimarra's statement, it is interesting to note that it conceptually parallels Castaneda's version. Considering the fact that the state-merit was made during the heated organizational campaign, it is likely that it arose in connection with a "union" discussion. Guimarra's remarks concerning the price of the grape keeping up with the price of labor covertly emphasized that the Company's profits might not be able to keep up with Union money demands. He clearly implied that machines would answer the increased price of labor problem.

Such a remark, threatening loss of job to mechanization due to a Union victory, seriously interferes with employee rights guaranteed by Section 1152 of the Act. I therefore find the remark violates Section 1153(a) of the Act.

GG. SECTION 11(f)

In 1977, Ramon Espinosa worked for Victor Pinson's crew and lived in that foreman's labor camp. The second foreperson or helper in that crew was Rosemary Mata (a/k/a/ Maria Pinson), Victor Pinson's daughter.

On September 2 or 3, Ramon Espinosa signed a UFW authorization card. At that time, Rosemary Mata commented to him that the cards meant nothing and that it was useless to sign.

On September 7, at 5:00 a.m., the Immigration Service picked up Espinosa at the labor camp and took him to Bakersfield. That same day, Ramon Espinosa was released from the Immigration Service and returned to the labor camp. Upon his return, Rosemary Mata asked Ramon why one of his companions had not been also returned. Ramon told her that the friend had not signed an authorization card. Ramon emphasized that signing the card had gotten him released.

The next day Rosemary Mata asked Ramon for the papers he received from the Immigration Service in order to show them to supervisor Paul Otoy. She and Otoy contacted John Guimarra Jr., who made some phone calls to determine why Ramon Espinosa had been released so quickly. Ms. Mata claimed her interest in the matter concerned an uncle of hers who had difficulties with Immigration.

Ramon testified that he felt "real bad" when Rosemary Mata disappeared with his papers because of the possibility of the Immigration Service returning. However, the papers were returned within an hour.

Although the combined interest of Rosemary Mata, Paul Otoy and John Guimarra Jr. in this particular

employee's immigration status is curious, there is no evidence that Ramon Espinosa's rights guaranteed by Section 1152 were interfered with by Respondent. The Company's inquiries concerned the source of Espinosa's release. Respondent in no way questioned him regarding his affiliation with the Union. At most, the employee felt insecure for an hour or less because he did not possess the documents. Being dispossessed in that manner does not establish proof of an unfair labor practice. I therefore find that Respondent did not violate Section 1153(a) of the Act.

HH. SECTION 11(i)

Pedro Vera has packed on and off for Piano Padillo's crew since 1963. During the labor strike in the late 60s and again in 1973, Pedro Vera did not participate in any strike activities at Respondent.

In late August, he attended the UFW convention in Fresno and became aware of the upcoming election. He came back from the convention with leaflets and buttons for distribution. He also began wearing a Union button. In September, he attended the UFW meeting at 40 Acres for Guimarra employees, where he signed a Union petition being circulated.

On September 21, the Wednesday prior to the election, Pedro was packing in the avenue, listening to the UFW radio

program. Pedro could hear other radios throughout the fields playing this program. While a well-known union song played,⁸¹ John Murray angrily approached Vera and told him to turn off his radio. Pedro turned it down. Murray turned and walked a short distance away. He then returned shouting for Vera to turn off the radio, protesting that it was making a lot of noise. Vera asked him why he was getting so angry, suggesting that Guimarra put on its own radio program. Murray then told him, "You cause too many problems. Probably I'm going to give you three days rest." Vera filed a charge that day against Murray.

Both Murray and Piano Padillo testified that Vera was a very good packer and worker. Murray contends that Vera turned up the radio volume when Murray told him to turn it down. Murray claimed not to know any UFW songs.

I credit Vera's version of the events. Murray was angered when he arrived at the field to find many radios in the avenue tuned to the UFW program. After yelling at Vera, he moved a short distance away and continued to hear the song playing loudly. He decided to take his anger out on Vera.

Conduct of that sort by a highly-placed Company supervisor seriously interferes with an employee's Section

⁸¹Several witnesses testified that "Trabajadores Campesinos" (GCX 14) was commonly associated with the UFW.

1152 rights. Here Vera, who recently began supporting the Union, was discouraged by Murray from listening to a UFW program. Further, Murray's order was based on animus towards the Union and not connected with any disruption of work. Murray's testimony in no way implied that Vera was not doing his usually good packing job.

I therefore find that Murray's conduct violated Section 1153(a) of the Act.

VI. Objections to the Election

The election was held September 26. The UFW received 673 votes, no union received 900 votes, and there were 172 challenged ballots (RX 52).

The UFW filed scores of objections, 92⁸² of which were set for hearing. The bulk of the objections were litigated during General Counsel's presentation of the unfair labor practice part of the case.

The following list covers, in chronological order, the disposition of most objections. There will follow a discussion of the remaining objections along with a conclusion.

⁸²Eighty-two objections were set for hearing pursuant to the Board's Order dated February 6, 1978. On April 4, 1978, the Board ordered in part and denied in part Petitioner's Request for Review, setting 10 additional objections for hearing. (UFWX 3)

A. Objections Litigated with Unfair Labor Practices or Dismissed at Hearing

Objection #1

- (1) Dismissed under Complaint §6(p).
- (2) Violation found under Complaint §11(g). Manuel Del Campo Sr. interrogated new employees, asking them whether they were "Chavistas."
- (3) Dismissed – lack of evidence.
- (4) Dismissed – lack of evidence.⁸³
- (5) Dismissed – lack of evidence.
- (6) Dismissed – lack of evidence.
- (7) Dismissed under Complaint §6(a).
- (8) Dismissed – lack of evidence.
- (9) Dismissed -- lack of evidence.
- (10) Dismissed – lack of evidence.
- (11) Violation found under Complaint §11(n).
Jose Chavez threatened employees with bringing in machines to keep out the UFW.
- (12) Dismissed – lack of evidence.
- (13) Dismissed – lack of evidence.
- (14) Violation found under Complaint §11(g).
Manuel Del Campo Sr. told employees that he would run out Union sympathizers.
- (15) Dismissed – lack of evidence.

⁸³ Those objections dismissed for lack of evidence were dismissed at the hearing upon representation by the UFW that it did not intend to present evidence.

(16) Dismissed – lack of evidence.

(17) Dismissed – lack of evidence.

(18) Dismissed under Complaint §6(p).

(19) Dismissed – lack of evidence.

(20) Dismissed – lack of evidence.

(21) Violation found under Complaint §11(d).

Joe Guimarra Jr. threatened employees with less work if the Union won the election.

(24) Dismissed – lack of evidence.

(25) Dismissed under Complaint §6(p).

(26) Violation found under Complaint §11(a).

Company leaflet (GCX 8) solicited employee grievances during organizational campaign.

(29) Dismissed – lack of evidence.

(30) Dismissed under Complaint §11 (b) .

(31) Dismissed under Complaint §11(1).

(32) Dismissed under Complaint §6(n)(3).

(33) Dismissed – lack of evidence.

(34) Dismissed under Complaint §11(b).

(35) Dismissed – insufficient evidence.

(36) Violation found under Complaint §10(c).

Joe Guimarra Jr. surveilled workers in Jose Liceaga's crew while they talked to UFW organizers,

(37) Dismissed – lack of evidence.

(38) Dismissed – lack of evidence.

(41) Violation found under Complaint §10(b).

Manual Del Campo Sr. interrupted and surveilled conversations between organizers and workers.

(42) Dismissed – lack of evidence.

(43) Dismissed – lack of evidence.

(44) Violation found in part under Complaint §10(d).

John Murray surveilled conversations between workers and an organizer.

(45) Dismissed under Complaint §10(a).

(46) Dismissed – lack of evidence.

(47) Dismissed – lack of evidence.

(48) Dismissed – lack of evidence.

(49) Dismissed under Complaint §11(k).

(50) Violation found under Complaint §5(i).

Santana Soto discriminatorily refused to rehire the Teresa Perez family (7 discriminatees).

(51) Violation found under Complaint §5(e).

Tony Miyagishima discriminatorily refused to rehire the Rufina Garza family (3 discriminatees).

(52) Dismissed – lack of evidence.

(53) Dismissed under Complaint §6(k).

(54) Dismissed – lack of evidence.

(55) Dismissed under Complaint §6(m).

(56) Dismissed under Complaint §6(f).

(57) Dismissed under Complaint §5(c).

(58) Violation found under Complaint §5(a).

Tony Miyagishima and Sal Guimarra discriminatorily refused to hire the Eulalia Mares family (3 discriminatees).

(59) Violation found under Complaint §5(g).

Tony Miyagishima and Sal Guimarra discriminatorily refused to hire the Lorenzo Galvan group (7 discriminatees).

(60) Violation found under Complaint §6(i).

Jose Liceaga discriminatorily terminated the employment of Jose Gamboa.

(61) Violation found under Complaint §6(d).

Macario Pinson, Sal Guimarra and Dan Radovich discriminatorily terminated the employment of Jesus and Maria Iniquez.

(62) Violation found under Complaint §5(b).

Tony Miyagishima discriminatorily refused to hire Gilberto Aceves.

(63) Dismissed under Complaint §6(g).

(64) Violation found under Complaint §5 (a).

Sal Guimarra and Tony Miyagishima discriminatorily refused to hire San Juana Mares. (.65}

(65) Dismissed under Complaint §6(n) (2).

(66) Dismissed – lack of evidence.

(67) Dismissed – lack of evidence.

(68) Violation found under Complaint §6(1).

Tino Espinosa and Dave Stanley discriminatorily discharged Emeterio Rodriguez and Juan Zapata Rios.

(69) Dismissed under Complaint §6(p).

(70) Dismissed – lack of evidence.

(71) Violation found under Complaint §9.

Macario Pinson refused to hire Elpidia Mesa family (3 discriminatees) because of their concerted activities to improve labor camp conditions.

(72) Dismissed – lack of evidence.

(73) Dismissed – lack of evidence.

(74) Violation found under Complaint §6(j).

Celso Domingo and Francisco Chavez discriminatorily terminated the employment of Fidel Martinez.

(75) Violation found under Complaint §6(b).

John Murray and Piano Padillo discriminatorily discharged Oscar Carrillo.

(76) Dismissed under Complaint §6(c).

(77) Dismissed – lack of evidence.

(78) Dismissed – lack of evidence.

(79) Dismissed – lack of evidence.

(80) Dismissed – lack of evidence.

(81) Dismissed – lack of evidence.

(82) Violation found under Complaint §5(d).

Santana Soto discriminatorily refused to hire Miguel Ramos.

New Objection 3

- (1) Dismissed – lack of evidence.
- (2) Dismissed – lack of evidence.
- (3) Dismissed – lack of evidence.
- (4) Dismissed – lack of evidence.
- (5) See Discussion of Complaint §§5(a)(b)(e)(f)(g).
- (6) Dismissed under Complaint §6(p).
- (7) Violation found under Complaint §6(d).

Macario Pinson, in the presence of a UFW organizer, threatened employees with loss of work if they remained with the organizer rather than moving out into the fields.

- (8) Dismissed under Complaint §10 (a).
- (9) Dismissed – lack of evidence.
- (10) Dismissed – lack of evidence.

B. The Remaining Objections

Objection 22⁸⁴ alleges that on or about September 8, Respondent distributed a leaflet (GCX 23) threatening loss of present benefits, implicitly promising salary increases and predicting that strikes are inevitable.

⁸⁴Considering the cumulative nature of the objections, and having found sufficient evidence to order the election set aside, my discussion of these remaining objections is purposefully brief.

Taken as a whole,⁸⁵ the leaflet leaves the impression that employees would lose their present benefits if they selected the UFW. These statements reasonably could be regarded by employees as an implied threat of a reduction in benefits if they designated the Union as their collective bargaining representative. Sportspal, Inc., 214 NLRB 917 (1974); NLRB v. Gissel Packing Co., 395 U.S. 575,618 (1969); The Great Atlantic and Pacific Tea Co., 194 NLRB 774,777-778 (1971).

Objection 23 alleges that a September 9 Company leaflet (GCX 22) threatens workers with loss of employment if there is a strike⁸⁶ and threatens non-citizens with

⁸⁵A portion of GCX 23 reads as follows:
Unfortunately, many employees mistakenly believe that if they bring in a union they will automatically get immediate wage increases and improvements in benefits. Nothing could be further from the truth. Under the law, wages and benefits are frozen during negotiations between the union and the company and negotiations can go -on for many months. Some of the negotiations between growers in Delano and the UFW have been going on over a year and one-half. Compare this to regular periodic salary increases you enjoy now without having to pay one cent for union dues. More importantly, even if an employer and a union reach an agreement on a contract, there is no guarantee that your salary and benefits will be higher under the contract. Far from requiring any increase in wages and benefits, the law doesn't even require an employer to keep in effect existing benefits if a union comes in. Remember, the UFW can't even guarantee that the benefits you presently enjoy will continue under a union contract. Bargaining starts from scratch. . . .

⁸⁶The fourth paragraph of the leaflet reads:
If you decided to strike, we have the right to replace you permanently and hire someone else to take your job. Even when the strike ended, you might find that your job was taken by someone else. This happened to many people in 1973.

deportation. I find that Respondent's statements contained in the leaflet are neither privileged communications nor a correct exposition of the law, Buddies Supermarkets, Inc. 192 NLRB 1004, 1011 (1971), but rather, veiled threats.

Taking into account the economic dependence of employees on their employer,⁸⁷ these statements impress me as subtle insinuations calculated to instill in the employees a sense of fear that their participation in any strike called by the Union in support of its demands would inevitably result in a permanent loss of jobs. It is now settled law that 'economic strikers who unconditionally apply for reinstatement at a time when their positions are filled by permanent replacements . . . remain employees . . . [and] are entitled to full reinstatement upon the departure of replacements unless they have in the meantime acquired regular and substantially equivalent employment,' or the employer has legitimate reasons for his failure to offer full reinstatement.⁸⁸ Ibid.

Objection 27 alleges that a pay increase and new medical insurance plan announced on April 15 interfered with employee rights in selecting a bargaining representative. Objection 28 alleges interference through a 10¢ per hour July wage increase. Dave Stanley testified that the medical plan was instituted in part to keep the work force non-union. Assuming arguendo that all benefits were given with that in mind, I find that motivation not to be improper because the benefits were granted prior to the commencement of active organization among Respondent's employees. Morika Kuramura, supra.

⁸⁷NLRB v. Gissel, supra, 617.

⁸⁸The Laidlow Corporation, 171 NLRB No. 175 enf'd, 414 F2d 99 (C.A.7,1969), cert. denied 397 U.S. 920(1970).

Objections 39 and 40 relate to the pre-petition lists lacking names of the entire crew of labor contractor Manuel Del Campo Jr. Company administrator Ron Levis testified regarding his compilation of the list of employees along with his efforts in connection with the Del Campo crew. I find that the Employer substantially complied with the provisions of California Administrative Code §23910 (See Henry Moreno, 3 ALRB No. 40 (1977)), providing the UFW with an adequate list.

C. Conclusion

The Decision is replete with serious unfair labor practices committed by Respondent. 28 employees who struck the Company in 1973 were refused employment in 1977 because of their support for the UFW. There were other discriminatory discharges, threats, interference with UFW organizers and surveillance of employees' union activities. The cumulative effect of this conduct adversely affected the employees' freedom of choice and created an unhealthy environment for conducting a fair election. Therefore, the election should be set aside.

REMEDY

Having found that Respondent engaged in certain unfair labor practices within the meaning of Sections 1153(a)

and (c) of the Act, I recommend that it cease and desist from engaging in such conduct and that it take certain affirmative action designed to effectuate the purposes of the Act. Having found that Respondent unlawfully discharged and refused to hire numerous Union supporters, conduct which strikes at the heart of the Act, I also recommend that Respondent be ordered to cease and desist from infringing in any manner upon the rights guaranteed to employees by Section 1152 of the Act. The serious infringement of employee rights in this case warrants a broad proscription against further violations of the Act.

General Counsel and the UFW urge applying other remedies including a bargaining order and expanded access. A discussion of these remedies follows.

A. The Bargaining. Order

The UFW urges that I order Respondent to recognize and bargain with the UFW as representative of Guimarra's employees. The UFW contends that only a bargaining order will truly effectuate the purposes of the Act in light of Respondent's numerous violations. The UFW failed to offer any evidence at the hearing to establish that it represented a majority of Respondent's employees.

Given the failure to establish majority status, it can be assumed that under the NLRA, only one situation may give rise to the remedy of a bargaining order. As the U.S.

Supreme Court indicated in N.L.R.B. v. Gissel Packing Co., Inc.,
supra., 613-614, a bargaining order may be appropriate

. . . without need of inquiry into majority status (of the union) on the basis of cards or otherwise, in "exceptional" cases marked by "outrageous" and "pervasive" unfair labor practices. Such an order would be an appropriate remedy for those practices, the court noted, if they are of "such a nature that their coercive effects cannot be eliminated by the application of traditional remedies, with the result that a fair and reliable election cannot be held.

(Cite omitted.)

Assuming arguendo that the ALRB has authority to issue a remedial bargaining order as does the NLRB, an assumption placed in serious doubt by Section 1153(f) which, unlike the NLRA, makes it unlawful to recognize, bargain with, or sign a contract with labor organizations not certified pursuant to the Act, the question remains as to whether Respondent's conduct was so egregious, so widespread, so destructive of its employees' rights, as to warrant a bargaining order as a necessarily appropriate remedy.

While I have found that Respondent engaged in serious unfair labor practices for which a strong remedy is appropriate, I do not believe that its conduct can be regarded as so exceptional, outrageous, or pervasive as to require imposition of a bargaining order, even in the event such a remedy is contemplated by the Act. It appears that the unfair labor practices can be remedied without resort to a bargaining order. Most important, because the UFW has failed to prove that it represented a majority of employees, a

bargaining order may not truly reflect the desires of Respondent's employees.

B. Increased Access

Both the General Counsel and UFW urge that the UFW be granted additional access to Respondent's workers than is allowed for by the Board's Access Rule. In view of the nature of Respondent's unlawful conduct, I believe that additional access is warranted. See Belridge Farms, supra., Dave Walsh Company, supra.

Several types of expanded access are appropriate to help restore the employees' protected rights, their confidence in the law, and to undo the lingering effects of Respondent's pervasive interference. First, during the four 30-day access periods provided by regulation, the UFW shall be permitted twice the number of organizers as is now allowed by the regulation. This moderate increase in the number of organizers should meaningfully facilitate the UFW's dissipation of Respondent's misconduct by allowing the UFW to make its presence felt more easily among the workers than the regulation would provide. In addition, during these four access periods, Respondent shall provide the UFW with employee lists on a bi-monthly basis, setting forth the information required by Section 20310(a)(2) of the Board's regulations. Such lists will be provided by Respondent without regard to the UFW's showing of interest.

Further, Respondent will allow the UFW and its representatives to meet with Respondent's employees for two periods of two hours each during work time. The employees will not be required to attend the meetings, but those who do attend shall be paid either the appropriate hourly wage for the time of their attendance or the appropriate piece-rate basis, as determined by the Regional Director. Respondent shall be obliged to provide the UFW space on its property on which to conduct the meetings, as determined by the Regional Director, and shall provide transportation for its workers to that site, again without loss of pay. No supervisors or foremen shall be present at the meeting. The UFW may suggest when the meetings shall be held and who shall attend them on its behalf, although the Regional Director shall seek to insure that the meetings do not unduly interfere with work requirements. The presence of UFW representatives meeting with employees during work-time on Respondent's property should alleviate some employee fears concerning their right to engage in Section 1152 activity.

C. Posting of Notices

It is also appropriate that a high-ranking official of Respondent, acceptable to the Regional Director, publicly read to employees during work-time the Notice to Employees that is attached to this decision. The times and places of the reading shall be determined by the Regional Director.

After the Notice is read to employees, a Board agent designated by the Regional Director shall be given one hour in which to answer questions raised by the employees. Respondent shall be responsible to see that its employees are brought together for this meeting. They shall be paid their normal rates for the time spent away from work in order to attend the reading of the Notice and the question-answer period. The Regional Director may determine, if appropriate, that because of peak season employment that such a reading should take place both before and after the peak season commences.

D. Bulletin Boards

Respondent shall provide the UFW with space on its employees' bulletin boards at each of its various ranches for the UFW to post organizational notices and the like. The UFW shall be entitled to post such notices during any and all of the four periods it determines to take access in the appropriate calendar years.

E. The Election

As earlier noted, as I have determined that Respondent's conduct interfered with the September 26, 1977 election, I am recommending that the election be set aside.

ORDER

Respondent Guimarra, its officers, agents, and representatives shall:

A. Cease and desist from:

1. Discouraging membership of any of its employees in the UFW, or any other labor organization, by unlawfully discharging or refusing to rehire them or in any other manner discriminating against employees in regard to their hire or tenure of employment, or in regard to any term or condition of employment, except as authorized by Section 1153 (c) of the Act.

2. Threatening employees with loss of employment for supporting the UFW.

3. Interrogating employees about their support for the UFW.

4. Promoting benefits for abandoning support of the UFW.

5. Surveilling or giving the impression of surveilling its employees' protected activities.

6. In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Labor Code Section 1152.

B. Take, the following affirmative action:

1. Offer Oscar Carrillo, Jesus Iniquez, Maria Iniquez, Jose Gamboa, Fidel Martinet, Ramon Ramirez (6(k)),

Felipa Ramirez, Sergio Ramirez, Ignacio Ramirez, Nicholas Ramirez Barren, Emeterio Rodriguez, Juan Zapata Rios, Juan Carrera, Hector Carrera, and Domingo Telles immediate and full reinstatement to their former or equivalent jobs, without prejudice to their seniority or other rights and privileges, and to make them whole for losses they may have suffered as a result of their discharge.

2. Offer Eulalia Mares, Maria L. Mares, San Juana Mares, Gilbert Aceves, Miguel Ramos, Jose Garza, Rufina Romero Garza, Calextra Romero, Amabali Encinas, Angel Garza, Lorenzo Galvan, Leonardo Galvan, Samuel Manriquez, Juana Manriquez, Tony Ochoa, Dolores Ochoa, Teresa Ochoa, Adelina Gurrola, Teofilo Garcia, Josephine Gonzales, Rosendo Gonzales, Teresa Perez, Rosa Perez, Alberto Perez, Celia Perez, Armando Perez, Eva Perez Guajardo and Sofia Tellez immediate employment and make them whole for losses they may have suffered as a result of Respondent's refusal to hire them.

3. Preserve and upon request make available to the Board or its agents, for examination and copying, all payroll records and other records necessary to analyze the amount of back pay due and the rights of reimbursement under the terms of this order.

4. Permit the UFW organizers to organize among its employees during the periods and times set forth in the Board's Access Regulation, using twice the number of